SIMEKA

member of Sanlam group

Retirement Matters 1/2024

Tax laws

The 2023 Taxation Laws Amendment Act has been promulgated on 22 December 2023. The changes relating to retirement funds remain as discussed in Retirement Matters 5 of 2023, when the final bill was released.

Exemption from using certain prescribed formats for preparing financial statements

The FSCA issued FSCA Communication 36 of 2023 as well as FSCA RF Notice 26 of 2023 on 21 December 2023. Board Notice (BN) 77 is currently in the process of being replaced with a Prudential Standard titled *Requirements related to Regulatory Reporting and Audited Financial Statements for Pension Funds*. The Prudential Standard incorporates refined reporting requirements, including reporting aligned to the recent amendments to Regulation 28.

Until the Prudential Standard has been finalised, there will be misalignment between the amended Pension Funds Act (the Act) Regulations and the reporting requirements prescribed in BN 77. This includes misalignment in respect of infrastructure asset reporting, as BN 77 does not provide for the latter whilst the regulations to the Act include requirements related to infrastructure assets. This misalignment creates a challenge from an audit reporting perspective as auditors cannot provide assurance on compliance with Regulation 28 if they did not audit whether a fund complies with the infrastructure reporting requirements.

As such, there is a need for the Regulation 28 audit report (Schedule IB1) to provide for an exception in respect of infrastructure reporting. The FSCA engaged Independent Regulatory Boards for Auditors (IRBA) in this regard and IRBA was not opposed to the FSCA providing for such an exception as an interim measure pending the finalisation of the Prudential Standard.

Therefore, the FSCA is providing for the exception relating to infrastructure reporting through an exemption in terms of which large funds (which includes large freestanding funds, umbrella funds, retirement annuity funds and preservation funds) are exempted from completing Schedule IB1 contained in BN 77 on the condition that such funds complete the revised Assurance Report on Compliance with Regulation 28 of the PFA, which is included in Annexure A attached to FSCA RF Notice 26 of 2023.

In addition, there is a need to perpetuate the current exemption pertaining to the completion of Schedule D provided that a fund completes the IRBA Auditor's Report, also taking into account that IRBA may change the IRBA Auditor's Report from time to time (such as the updated version published by IRBA in June 2023).

In summary, the exemptions published in accordance with FSCA RF Notice 26 of 2023 therefore gives effect to the following:

- It exempts large funds from the requirement to complete Schedule D, on the condition that funds complete the IRBA Auditor's Report, as approved and amended by IRBA from time to time; and
- It exempts funds from the requirement to complete Schedule IB, on the condition that such funds complete Annexure A to FSCA RF Notice 26 of 2023 titled "Assurance Report on Compliance with Regulation 28 of the Pension Funds Act". The latter will only apply for the preparation of financial statements in respect of a financial year that ends after 31 December 2022. For any financial year that ends prior to 31 December 2022, the IRBA's illustrative "Assurance Report on Compliance with Regulation 28 of the Pension Funds Act" will still apply as an alternative to Schedule IB.

The exemption notice replaces FSCA RF Notice 5 of 2020 and will be valid pending the finalisation of Prudential Standard currently under development, which will ultimately replace BN 77.

Draft Joint Standard on Cybersecurity and Cyber Resilience Requirements

The draft Joint Standard on Cybersecurity and Cyber Resilience Requirements for Financial Institutions with supporting documents was submitted to Parliament on 30 November 2023. The final standard will likely only be published during March 2024.

The Joint Standard will apply to various financial institutions, including retirement funds and retirement fund administrators.

It sets out detailed requirements and principles for sound practices and processes of cybersecurity and cyber resilience.

The commencement date of the Joint Standard has not yet been determined. According to the draft Joint Standard, it will commence on a date to be determined by the Prudential Authority and the FSCA through a notice published on their websites. However, in the consultation report which contains the Authority's responses to comments previously made by the retirement funds industry, it is mentioned that a 12 month-period from the publication date will be given to financial institutions to implement the requirements of the Joint Standard.

It is also mentioned in the consultation report that the FSCA will assess the need for guidelines on the implementation to the different financial institutions.

Update on Omni-CBR

The FSCA on 4 December 2023 published FSCA Communication 33 of 2023 which is an update on the roll-out and implementation of the cross-sectoral Conduct of Business Return (Omni-CBR) planned for financial institutions by the FSCA. The purpose of the Communication is to provide:

- an update on the development of the Omni-CBR;
- an overview of the stakeholder consultation process undertaken in respect of the first draft of the Omni-CBR template, including a summary of industry comments received; and
- details on the envisaged next steps for the roll-out and implementation of the Omni-CBR considering the extensive feedback received to date.

Since the publication of the draft Omni-CBR template and the Roadmap (the document providing details on the envisaged engagement and implementation milestones and a high level overview of the type of data requested in the Omni-CBR and that confirms the next steps in finalisation of the Omni-CBR) in June 2022, several developments have taken place, including extensive consideration of a wide range of comments received from stakeholders. The stakeholder feedback has highlighted factors that require further consideration and broader consultation to ensure a more streamlined, efficient, and effective conduct reporting framework in the longer term. The framework must balance the need for consistent access to meaningful data that facilitates and monitors the delivery of fair outcomes to financial customers without imposing disproportionately burdensome or overly complex compliance obligations on financial institutions.

The draft Omni-CBR template is currently undergoing changes, including a significant streamlining of data points requested. The FSCA is also finalising a consultation survey to obtain deeper insights on the potential operational and systems impact of future Omni-CBR reporting.

To give proper and considered effect to the various pieces of work, the implementation timelines will be extended. During the first half of 2024, work will continue on the Phase 1 and Phase 2 activities described in the Roadmap. The extended timelines for Phase 3 and Phase 4 will be communicated during 2024, subject to further possible revision pending enactment of the Conduct of Financial Institutions Bill.

B-BBEE self-assessment questionnaire

The FSCA distributed a Regulation 28 questionnaire to funds for completion by 31 January 2024. The questions relate to whether the fund considers Regulation 28 principles when contracting services. In terms of Regulation 28(c)((iii), the board of a fund must, in contracting services to the fund, consider the need to promote the broad-based black economic empowerment of those providing services.

The FSCA has confirmed that the questionnaire should be completed in respect of overall procurement by the fund and not only on the investment-related procurement of the fund.

It is the intention of the FSCA to issue a report to the industry at the end of June 2024 on their findings.

Q&A

Where an employee, who is a member of a retirement fund, was involved in the loss of stock, and concealed this from the employer, causing a loss to the employer, can the loss be deducted from the member's benefit in terms of section 37D of the Pension Funds Act?

In the Pension Funds Adjudicator determination of *PM de Kock v Compass Group Southern Africa Pension Fund and Others*[1], the employer submitted that the loss of its stock resulted from an employer-employee contractual agreement, in terms of which the employee failed to meet the required managerial standard by failing or neglecting to properly manage, record or account for the stock. It submitted that the employee's actions of dishonestly concealing the loss prevented it from taking action to improve profitability and prevent further losses. The Adjudicator held that it was not the intention that section 37D(1)(b)(ii) must be extended to contractual disputes, including those of which the failure was concealed as submitted by the employer. If the legislature intended such an interpretation it would have clearly stated so.

1 PFA/MP/00002506/2013/MR