VERBATIM

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APPOINTMENT OF A VALUATOR

PF Notice 1, which came into effect on 10 February 2016, states that the appointment of a valuator by a fund can only be done by completing the annexures attached to PF Notice 1 and submitting the annexures to the Registrar. If a fund that is not valuation exempt or does not have an appointed valuator the fund must submit the completed annexures appointing a valuator within 90 days after 10 February 2016.

Funds that are registered after 10 February 2016 must appoint a valuator within 90 days from the date on which they are registered or within 90 days from the date on which the services of their current valuator is terminated.

A valuator must have suitable professional indemnity insurance with regard to the fund/s to which he or she is appointed. Where a valuator is covered by the professional indemnity insurance of their employer, the valuator does not need to have additional insurance in his or her name. The valuator appointed to the fund must be a natural person living in South Africa.

LOSS OF CAPITAL DUE TO A PENDING SECTION 14 TRANSFER AND ADMINISTRATION COSTS

In a recent case, the Pension Funds Adjudicator handed down a determination in respect of the reasonableness of placing fund assets subject to section 14 approval in a cash portfolio, the costs associated with bringing the fund's records up to date and ensuing loss of capital.

Fund A (an Orphan fund) had to submit a surplus apportionment scheme to the Registrar of Pension Funds before a section 14 transfer could be approved. In order to do so, Fund A's records had to be brought up to date. Therefore Fund A's trustee (at the time and referred to as Mr T) appointed a service provider to do so.

Due to the delay this exercise caused and the fact that there was no board to instruct him on how to invest Fund A's assets, Mr T switched Fund A's assets into a cash portfolio in order to protect the assets against market volatility.

During this time Mr T was replaced by Mr G who lodged a complaint with the Adjudicator stating Mr T was negligent because he took so long to finalise the section 14 transfer, he had incurred excessive costs by appointing the service provider to bring the records up to date and that Mr T failed to invest Fund A's assets in the same portfolio as Fund B (to which the members of Fund A were being transferred).

The Adjudicator held that even though the strategy to keep the Fund A's assets invested in a cash portfolio was extremely conservative, it was reasonable to do so as this was done in order to safeguard Fund A's assets against market volatility. The administrative expenses incurred by Fund A, namely the costs of an independent service provider, were necessary in order to bring the Fund's records up to date.

Furthermore, the Adjudicator stated that it was unreasonable to compare the returns earned by Fund B to those of the cash portfolio that Fund A was invested in. The reason being that the assets could not be invested in Fund B prior to the approval of the section 14.

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It is interesting to note that due to the amount of time it took the Financial Services Board to finalise the section 14 transfer, the Adjudicator sent this determination to the Registrar of Pension Funds to note.

INTEREST ON LATE PAYMENT OF BENEFITS

As there are different practices in the retirement fund industry relating to the interest payable as a result of the late payment of benefits to fund members (some administrators include this amount to form part of the lump sum benefit payable to a member, whereas other administrators pay the amount separately to the member as interest) SARS has issued Binding General Ruling: No. 31 to clarify the position.

An amount that is calculated after receipt of the claim form until the date that the fund is obliged to pay the benefit in terms of the rules of the fund is regarded to be part of the lump sum benefit.

An additional amount that may become payable in circumstances where the fund fails to meet this obligation and is at fault for delaying the payment of the benefit constitutes interest that is not part of the lump sum benefit.

The fund must therefore issue an IT3(b) to the member and send a copy to SARS.

RETIREMENT REFORM

Whilst annuitisation has been postponed until 1 March 2018, the following amendments will continue as scheduled from 1 March 2016:

- The tax deduction for contributions to all retirement funds (including provident funds) will increase to 27.5 per cent of the greater of taxable income or remuneration, up to a cap of R350 000 per year, from 1 March 2016.
- The minimum threshold required for annuitisation for pension and retirement annuity funds will still be increased from R75 000 to R247 500.
- Aside from the issues covered in the urgent tax amendment bill, all other provisions legislated in the 2015 Tax Laws Amendment Act (and all other tax laws) will come into force on 1 March 2016.

PLEASE NOTE:

The tax deduction for provident fund contributions will remain in place whilst annuitisation is being reviewed. If by 1 March 2018 the issues around annuitisation are not resolved, this tax benefit in respect of provident fund contributions will be reviewed (one must expect that it will actually fall away).

Tax free transfers between pension and provident funds have also been postponed until 1 March 2018.

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