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FOR YOUR BENEFIT

Accrual dates

ACCRUAL DATES
WHEN DO BENEFITS ACCRUE AND HOW DOES THIS AFFECT MEMBERS, TRUSTEES, EMPLOYERS AND FUND ADMINISTRATORS?

For the purposes of retirement funds, an "accrual date" is the date on which a benefit becomes due and payable to a member or beneficiary.

The Income Tax and Pension Funds Acts define the manner in which fund benefits accrue to a member and the tax implications.

There is sometimes confusion on exactly how and when the accrual date happens and what it means for the member, what the employer should be doing, how the fund administrator will manage the process, what responsibilities the trustees have, what processes should be put in place, what rule amendments might be necessary and what tax becomes payable.

This note provides guidance to all parties and will clear up confusion regarding this issue.

ACCRUAL OF FUND BENEFITS

When an employee who is a member of the company retirement fund exits service for whatever reason, she will become entitled to claim a benefit from the fund.

The actual timing of the benefit payment is a decision that is made by the member. The benefit could, for example, be paid immediately or delayed, depending on their wishes.

The most important principles to grasp are:

- *the date of leaving service of the employer and the date on which the fund benefit accrues and becomes payable do not need to be the same; and*
- *for tax purposes, the fund benefit is only deemed to have accrued when the member elects to receive it.*

All of this will be explained further in this note.

1. WITHDRAWAL BEFORE RETIREMENT – IMMEDIATE PAYMENT OF BENEFIT

When an employee exits service from the employer and immediately *makes an election* to take his fund benefit, a withdrawal form would be completed straight away and the benefit would become due and payable. This is the most common occurrence.

On the withdrawal form, the member would state exactly what she has elected to do with the benefit, for example, take some of it in cash and invest the rest.

If the member dies *before an election has been made but after he has left service,* the benefit will become payable to his estate or, if the rules permit this, paid in terms of Section 37C of the Pension Funds Act.

Tax will be applicable at the date that the member elects how the benefit will be paid or on the date of death if earlier.

2. WITHDRAWAL BEFORE RETIREMENT – DELAYED PAYMENT OF BENEFIT

For tax purposes the withdrawal benefit is only deemed to have accrued when the member *elects to have it paid*, unless the benefit is transferred to another approved fund or the member dies first.

As a consequence, the date on which the member leaves service of the employer is de-linked from the date on which the benefit accrues for tax purposes. The employer is not therefore able to submit a withdrawal form to the fund administrator without the member's authorisation because it is the member's choice as to when to take the benefit. The only exceptions would occur if the benefit were transferred to another approved fund (this might be the case where, for example, a benefit has become "unclaimed"), or the member dies.

The rules of the fund would not have to be amended as this is legislated. It is however, important that the fund rules are clear that members who have left the service of the employer would only be entitled to their fund credit and that no other benefits would be applicable e.g. allocation of future reserves or insured benefits.

To date, there is no legislated limit on how long a member may delay making an election for her benefit to be paid.

It would be advisable for a member to complete a form indicating that he is delaying the payment of his benefit and that he would advise his election later.

3. WITHDRAWAL BEFORE RETIREMENT – DEFERRED / PAID-UP MEMBERSHIP

The Pension Funds Act defines a "deferred pensioner" as a member who has not yet retired but has exited the service of the employer prior to normal retirement date and left his benefit in the fund.

If the rules of a fund allow for a member to become deferred / paid-up before retirement, he then has the option to delay taking his retirement benefit until either ill-health early retirement, early retirement, normal retirement or late retirement.

Otherwise, the rules may allow deferred members to take their money on election at any time.

In this instance, the member would complete a form advising that the benefit must remain in the fund until retirement and that access to the benefit would not be allowed until one of the above retiring events takes place.

4. RETIREMENT – DELAYED PAYMENT OF BENEFIT

As is the case on exit from service before retirement, for tax purposes the benefit on retirement only accrues when the member *elects to have it paid*.

Therefore, when a member retires from service the retirement benefit can be left in the fund until the retiree makes an election on how the benefit should be paid, i.e. what part will be paid in cash and what part as a pension.

The trustees therefore have no power over when a member elects to retire and receive their benefit from the fund – this is entirely at the member's choice. Trustees cannot for example put a limit on when this takes place.

The rules of the fund would not have to be amended as this is legislated. It is however, important that the fund rules make clear that members who have retired from the service of the employer would only be entitled to their retirement benefit and that no other benefits would be applicable e.g. allocation of future reserves or insured benefits.

To date, there is no legislated limit on how long a member may delay making an election for the benefit to be paid.

It would be advisable for a member to complete a form indicating that she is delaying the payment of her retirement benefit and that she would advise her election later.

5. UNCLAIMED BENEFITS

The Pension Funds Act 24 of 1956 defines an "unclaimed benefit" as follows:

(a) any benefit, other than a benefit referred to below, not paid by a fund to a member, former member or beneficiary within 24 months of the date on which it in terms of the rules of the fund, became legally due and payable.

(b) The following benefits will also be deemed "unclaimed" as noted:

- (i) A death benefit payable to a beneficiary under Section 37C not paid within 24 months from the date on which the fund became aware of the death of the member or such longer period as may be reasonably justified by the board of the fund in writing;
- (ii) A benefit payable as a pension or annuity, any benefit which has not been paid by a fund to a member, former member or beneficiary within 24 months of the expiry date of any guarantee period for pension payments provided for in the rules of the fund or the date on which any pension payment or annuity legally due and payable in terms of the rules of the fund became unpaid;
- (iii) A benefit payable to a former member who cannot be traced in accordance with Section 15B(5)(e), any benefit that has become legally due and payable to a former member in terms of a surplus apportionment scheme approved in terms of this Act not paid to that former member within 24 months of the date on which it became legally due and payable;
- (iv) Any benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund applies for cancellation of registration in terms of Section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid;
- (v) Any amount that remained unclaimed or unpaid to a non-member spouse within 24 months from the date of the deduction contemplated in Section 37D(4)(a)(ii).

A benefit cannot be unclaimed when it should be transferred as part of a transfer of business in terms of Section 14, where an annuity is purchased in respect of a pensioner or otherwise in terms of the Act.

The trustees must have a policy in place on how "unclaimed" benefits will be dealt with in terms of housing them in the fund or transferring them to an unclaimed benefits fund and, if they are held in the fund, what the investment strategy will be. If the unclaimed benefits are held in the fund, every effort must be made by the trustees to trace these members either through the employer, the trustees or through an appointed third party tracer.

6. TAX IMPLICATIONS FOR THE MEMBER

With all exits from a fund, there are tax implications for the member:

- The tax on any benefit payment will be in accordance with the tax scales *on the accrual date* i.e. the date on which the member makes the election to take the fund benefit. If the tax laws change between the date of exit from service and the date the member elects to take the benefit, the laws at the latter date will apply;
- The tax on any benefit that is being transferred to another approved retirement fund will be as at the date of the transfer;
- The tax on a death benefit payable in terms of Section 37C will be as at the date of death of the member.

WHAT DOES THIS MEAN FOR YOU?

Trustees must ensure that they have a process in place that deals with all the above events to ensure that the fund benefit does not become "unclaimed" or forgotten about.

So, if money remains in the fund before or after retirement:

- *a member who delays payment of the benefit must continue to receive a benefit statement;*
- *the fund administrator must have contact details of the member and if possible of a next of kin;*
- *the member must be able to participate in the process of electing trustees when elections are held;*
- *the trustees must have a policy in place regarding investment options for these members;*
- *the trustees must ensure that the rules are amended if applicable;*
- *the member should be encouraged to complete a form should they wish to delay payment of the benefit.*

Your Robson Savage consultant will be glad to provide any further input you might require.

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