

April 2020

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National Budget 2020 - Effect on Retirement Funds and their Members

1. Retirement Reform

1.1 Unclaimed Benefits

Unclaimed benefits in retirement funds and the Guardian's Fund are being considered for infrastructure funding. Legislation will be introduced to centralise unclaimed benefit funds and establish a central registry of all members of retirement funds.

Background

Unclaimed benefits have been an issue in the retirement funds industry since the early eighties. At one stage, the only option available to funds with unclaimed benefits was to transfer such benefits to the Guardian's Fund. The regulatory authorities then suggested to the industry that the solution lay in a central unclaimed benefits fund. This proposal was resisted by the industry due to concerns regarding which organization would be responsible for the administration of such a fund and the potential for mismanagement.

In 2008, the Financial Services Board (now the Financial Sector Conduct Authority "the FSCA") agreed that administrators could themselves establish funds for the specific purpose of housing unclaimed benefits. Unclaimed benefits were then defined in the Pension Funds Act and an unclaimed benefit fund administered by an administrator was recognized as a pension or provident preservation fund in the Income Tax Act.

It appears that there are still billions of rands attributable to unclaimed benefits, both in unclaimed benefit funds and also in employer operated retirement funds.

Comment

Given the urgent need to fund infrastructure and economic development, it seems reasonable that money attributable to unclaimed benefits which is unlikely ever to be claimed should be used for this purpose. There are however some concerns. At what stage will an unclaimed benefit fall into this category? Will the centralization of unclaimed benefit funds entail the transfer of the benefits in these funds to a central unclaimed benefits fund? If so, the concerns previously raised by the industry regarding such a fund remain valid.

1.2 Annuitization of Provident Funds

Government, NEDLAC and the Labour Council appear to have agreed to proceed with this reform, so it is likely that the annuitisation of provident funds will take place on 1 March 2021.

Background

Under the current dispensation, members of pension funds and retirement annuity funds are allowed to take only one third of the total amount payable on retirement as a lump sum. The current threshold for the amount that may be commuted in full is R247 500 and the remainder of the benefit must be paid as an annuity. Members of provident funds, however, can receive payment of the full benefit in cash. In 2015, Government announced its intention to synchronize the tax dispensation applicable to all retirement funds and accordingly to phase in the annuitization of provident funds.

Due partially to poor communication on the part of Government, this proposal met with resistance, in particular from COSATU and other Unions and the 2015 proposals were only partially implemented.

Comment

It now appears that there has been some buy-in to this proposal from the labour movement. In 2015, there was still some lack of clarity on the manner in which the annuitization of provident funds was to be implemented. Since legislation should not be retrospective, the rights of current members of provident funds to have the part of their benefit which has accrued prior to the implementation date of annuitization should be protected. This principle was recognized in the legislation proposed in 2015 and presumably will be carried forward into the legislation implementing these changes.

Accordingly, the following measures, which were contained in the legislation proposed in 2015, will be introduced to protect historic vested rights in provident funds:

- ✓ The compulsory annuitization provisions will not apply to the benefit a member of a provident fund who is older than age 55 as at 1 March 2021 and who remains in the same provident fund until retirement;
- ✓ In the case of a member of a provident fund who is younger than age 55 years as at 1 March 2021, the part of his benefit attributable to contributions (and any growth thereon) made prior to 1 March 2021 ('the vested portion') will not be subject to annuitization and must be maintained in a separate account in order to separate the vested portion from the part of the member's benefit attributable to contributions (and growth thereon) made after 1 March 2021;
- ✓ The protection of provident fund vested rights will continue to apply if a member of a provident fund transfers to another retirement fund or preservation fund after 1 March 2021. This means that on transfer to another retirement fund or preservation fund, the provident fund transferring the benefit must advise the transferee fund of the vested portion of the member's benefit so that this amount continues to be protected from annuitization in the transferee fund;
- ✓ The rules of provident funds will have to be amended to provide for the protection of vested rights prior to 1 March 2021, and if a transferee retirement fund or preservation fund receives a benefit from a provident fund which contains an amount recognized as a vested portion, the transferee fund will also have to amend its rules to ensure the rules provide that the vested portion of the benefit is protected from annuitization.

2. Reforms to improve the oversight and governance of commercial umbrella funds, fund consolidation and auto-enrolment are proposed.

2.1 Improved oversight and governance of commercial umbrella funds

These proposals are in line with the Financial Sector Conduct Authority's expressed intention of becoming more intrusive and investigative in their supervisory role. The FSCA have already addressed the governance of umbrella funds in Guidance Note 4 of 2018 which requires that to qualify for exemption in terms of Section 7B (b) (i) of the Pension Funds Act from the requirement to elect member trustees, at least 50 per cent of the members of the board of trustees of an umbrella fund must be independent. The note further sets out strict criteria for a trustee to qualify as truly independent. Commercial umbrella funds that fail to

comply with this requirement are unlikely to qualify for exemption.

2.2 Fund Consolidation

The FSCA have indicated that they want to reduce the number of retirement funds under their supervision and accordingly may make life more difficult for free-standing funds operated by an employer.

2.3 Auto-enrolment

There is some confusion about exactly what is meant by this term, but the most likely interpretation, since it is in line with Government's desire to encourage savings towards retirement funding, is that it will now be compulsory for employers to provide a retirement fund for their employees.