

Covid-19: Pension boards may assist financially distressed employers & employees



Source:

<https://www.webberwentzel.com/News/Pages/covid-19-pension-boards-may-assist-financially-distressed-employers-and-employees.aspx>

To address the impact of Covid-19 and the nationwide lockdown on financially distressed employers and employees, the Financial Sector Conduct Authority (FSCA) issued Communication 11 of 2020, highlighting section 13A of the Pension Funds Act 24 of 1956 (PF Act) which regulates the payment of contributions and certain benefits to pension funds. It requires the employer of a member to a pension fund, in line with the rules of the fund, to pay the pension fund in full any contribution which is deducted from the member's remuneration (i.e. member contribution) and/or any contribution for which the employer is liable (i.e. employer contribution).

In terms of section 13A(3) of the PF Act, the full contributions that are payable to a fund in terms of its rules must be paid by no later than seven days after the end of the month for which such contributions are due and payable. Due to practical considerations, however, most funds have rules (which are permissible in terms of section 13A(4) of the PF Act) that allow for the relaxation of section 13A(3) of the PF Act by making provision for instances where there is a break in service, employees take certain types of paid or unpaid leave, there is a postponement of contribution payments or a reduction of pensionable service.

Key points highlighted in the Communication are that:

a rule that allows for the relaxation of the section can be relied on by an employer who may make a formal request to the board of a fund for the suspension or reduction of contributions due to financial strain caused by the Covid-19 pandemic. The board of the fund will have to consider such a request pursuant to the relevant rules and the circumstances of the employer. Funds must relay the decision made relating to the request to the affected members within 30 days of receipt of such request;

funds that currently do not have rules that make provision for the relaxation of contribution payments should urgently submit relevant rule amendments to the FSCA pursuant to engagements with employers to that effect. Only rule amendments relating to section 13A of the PF Act should be submitted to the FSCA as a matter of urgency. No other rule amendment should form part of the urgent submission; for purposes of efficiently registering the rule amendment, the effective date of the agreement between a fund and an employer should be specified. Currently, the FSCA will only be able to provide an unstamped letter relating to the rule amendment and will only be able to provide a stamped version once business is back to normal; and

funds must maintain a record of affected members of the fund. The FSCA can request the record from funds and the funds must produce them upon request.

Tax implications

Generally, contributions to pension funds, provident funds or retirement annuity funds (retirement funds) are fully deductible by individuals (e.g. employees) but limited to the lesser of (i) ZAR350 000; (ii) 27.5% of the higher of the individual's normal remuneration or taxable income; or (iii) the individual's normal taxable income without taxable capital gain. Contributions to these retirement funds by an employer for the benefit of any employee or former employee in terms of the rules of the relevant fund are fully deductible, albeit that most approved rules limited the amount that may be contributed by an employer to retirement funds on behalf of employees. However, in certain circumstances contributions by an employer to a retirement fund for the benefit of employees may trigger a taxable fringe benefit liability. Importantly, the deductible contributions made by an employee to a retirement fund may be taken into account in calculating the employees' tax (PAYE) to be withheld. This is unchanged for the employer. Any suspension or reduction of contributions due to financial strain caused by the Covid-19 pandemic would, however, mean that the deductions available to employees for contributions to retirement funds will no longer be available, resulting in increased taxable income (remuneration), and therefore more PAYE for the period of the suspension. In other words, while the employees will derive a cash flow benefit from not having to make contributions to the retirement fund, their PAYE deductions will increase. However, there will still be a significant cash flow advantage for the employees in not having to make any contributions during the period of suspension.

When the suspension or reduction of contributions is lifted, employees may be required to make good past contributions that were not paid. Provided this does not result in contributions by the employees exceeding the limits mentioned above, they will still be entitled to the relevant income tax deductions, and such contributions may be taken into account by employers in the determination of the employee's remuneration for PAYE purposes.

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