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GOVERNMENT GAZETTE

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PRESIDENT'S OFFICE

No. 1103. 3 July 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 38 of 1996: Tax on Retirement Funds Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1103. 3 Julie 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 38 van 1996: Wet op Belasting op Uittreefondse, 1996.

ACT

To provide for the taxation of interest and rental income of retirement funds and untaxed policyholder funds of insurers; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 27 June 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

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Definitions

1. For the purposes of this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962 (Act No. 58 of 1962), hereinafter referred to as the Income Tax Act, bears the meaning so assigned, unless the context within which such word or expression is used otherwise indicates and—

(i) "actuarial value" means the value placed at any particular date, on the assets and liabilities—

(a) of a retirement fund, as the case may be—

(i) by the valuator appointed to the fund in terms of section 9A of the Pension Funds Act, 1956 (Act No. 24 of 1956), in terms of the latest actuarial report with a valuation date before the commencement of the relevant tax period, particulars of which shall be lodged with the Financial Services Board before the end of such tax period and found acceptable by such Board;

(ii) by the actuary responsible for the valuation of the assets and liabilities of a pension fund contemplated in section 2(1) of the last-mentioned Act, in terms of the latest valuation made in respect of such pension fund with a valuation date before the commencement of the relevant tax period, particulars of which shall be lodged with the Commissioner before the end of such tax period and found acceptable by the Commissioner in consultation with the Chief Actuary of the Financial Services Board; or

(iii) by the actuary responsible for the valuation of the assets and liabilities of a fund or scheme contemplated in paragraph *(a)* or *(b)* of the definition of "pension fund" in section 1 of the Income Tax Act, in terms of the latest statutory valuation made in respect of such fund or scheme with a valuation date before the commencement of the relevant tax period—

(aa) which valuation shall be on the basis as is required in terms of the relevant statutory requirements; and

(bb) particulars of which shall be lodged with the Commissioner before the end of such tax period and found acceptable by the Commissioner in consultation with the Chief Actuary of the Financial Services Board; or

(b) in the case of an untaxed policyholder fund, by the insurer's valuator appointed in terms of the Insurance Act, 1943 (Act No. 27 of 1943), in terms of the latest valuation on the basis as required in terms of the last-mentioned Act with a valuation date before the commencement of the relevant tax period, and particulars of which shall be lodged with the Financial Services Board before the end of the relevant tax period and found acceptable by such Board; (i)

(ii) "Financial Services Board" means the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or its successor; (ix)

(iii) "fund" means a retirement fund or an untaxed policyholder fund, as the case may be; (iv)

(iv) "guaranteed annuity" means an annuity contemplated in section 29(4)*(a)*(iii) of the Income Tax Act, where such annuity is contractually subject to a guaranteed increase at a fixed rate, which rate may be zero, over the full term of the annuity, excluding any annuity which may participate in any bonus distributions by the insurer; (v)

(v) "insurer" means any company registered to carry on long-term insurance business as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943); (xii)

(vi) "interest" includes—

(a) any amount contemplated in the definition of "interest" in section 24J(1) of the Income Tax Act; and

(b) any amount which is deemed to be interest in terms of section 8E of the Income Tax Act; (x)

(vii) "market value", in relation to any asset, means the amount which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market; (vi)

(viii) "pensioner" means any person to whom an annuity is being paid by a fund; (viii)

(ix) "retirement fund" includes—

(a) any "pension fund", "provident fund" or "retirement annuity fund" as defined in section 1 of the Income Tax Act;

(b) any fund which is managed or controlled outside the Republic and which fund is, having regard to the rules of the fund, its objectives and the manner in which it is administered, substantially similar to a fund contemplated in paragraph *(a)*; and

(c) any pension fund, provident fund or retirement annuity fund deemed to have been approved as a pension fund, provident fund or retirement annuity fund for the purposes of the Income Tax Act or to have been established by law in the Republic, as the case may be, as contemplated in section 56 of the Income Tax Act, 1995 (Act No. 21 of 1995); (xi)

(x) "tax" means the tax on retirement funds and provisional tax payable in terms of this Act; (ii)

(xi) "tax period" means—

(a) the period 1 March 1996 to 31 August 1996;

(b) the period 1 September 1996 to 28 February 1997; and

(c) every consecutive period of 6 months ending on 31 August or the last day of February thereafter, as the case may be; (iii)

(xii) "untaxed policyholder fund" means a fund contemplated in section 29(4)*(a)* of the Income Tax Act. (vii)

Levy of tax and rate thereof

2. There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the tax on retirement funds, calculated at the rate of 17 per cent of the taxable amount, as determined, as the case may be, in the case of—

(a) an untaxed policyholder fund, in accordance with the provisions of section 4; or

(b) a retirement fund, in accordance with the provisions of section 5.

Determination of income of fund

3. The income of any fund in respect of any tax period shall be an amount determined in accordance with the formula—

$$A = I + (R - E)$$

in which formula—

(a) "A" represents the income to be determined;

(b) "I" represents the gross amount of any interest received by or accrued to such fund during such tax period from a source within the Republic or deemed to be within the Republic as contemplated in section 9 of the Income Tax Act;

(c) "R" represents the gross amount of any rental income (including any royalty and any premium or like consideration contemplated in paragraph *(g)* of the definition of "gross income" in section 1 of the Income Tax Act) received by or accrued to such fund during such tax period from a source within the Republic or deemed to be within the Republic as contemplated in the last-mentioned section 9; and

(d) "E" represents, in relation to such tax period, the sum of—

(i) any expenditure actually incurred by such fund during such tax period directly in the production of the rental income represented by symbol "R"; and

(ii) the appropriate portion of any allowance calculated in respect of any asset (whether movable or immovable, corporeal or incorporeal) from which such rental income arises,

which would have been allowed as a deduction in terms of the provisions of the Income Tax Act had the provisions of such last-mentioned Act been applicable for the purposes of this Act: Provided that—

(aa) where the sum of such expenditure and allowance exceeds the income represented by symbol "R", the sum of such expenditure and allowance shall be limited to the amount represented by symbol "R"; and

(bb) any excess as contemplated in subparagraph *(aa)* shall not be set-off against the amount represented by symbol "I", but shall be carried forward to the tax period immediately following such tax period and shall be deemed to be expenditure actually incurred by such fund directly in the production of rental income or an allowance calculated in respect of, as the case may be, such immediately following tax period.

Determination of taxable amount of untaxed policyholder fund

4. The taxable amount in relation to any untaxed policyholder fund in respect of a tax period shall be an amount determined in accordance with the formula—

$$T = \frac{[A - (B + C)] \times F}{D}$$

in which formula—

(a) "T" represents the taxable amount to be determined;

(b) "A" represents the income of such untaxed policyholder fund determined in accordance with the provisions of section 3 in respect of such tax period;

(c) "B" represents the portion of symbol "A" attributable to assets referred to in section 29(4)*(a)*(i) of the Income Tax Act as allocated to retirement funds in terms of section 9 during such tax period;

(d) "C" represents the portion of symbol "A" attributable to assets held during such tax period—

(i) representing business of such untaxed policyholder fund as contemplated in section 29(4)*(a)*(iii) of the Income Tax Act (excluding assets contemplated in paragraph *(c)*);

(ii) equal to the statutory actuarial liabilities under guaranteed annuities; and

(iii) which have been accounted for and held in a separate portfolio on 1 March 1996 in terms of a practice consistently applied by such untaxed policyholder fund before such date;

(e) "D" represents the actuarial value of the liabilities of the untaxed policyholder fund less the actuarial value of the liabilities relating to the assets contemplated in paragraphs *(c)* and *(d)*; and

(f) "F" represents the value represented by symbol "D" less the sum of the actuarial value of the liabilities relating to the assets contemplated in section 29(4)*(a)*(ii) and (iii) of the Income Tax Act (excluding assets representing guaranteed annuities contemplated in paragraph *(d)*).

Determination of taxable amount of retirement fund

5. (1) The taxable amount in relation to any retirement fund in respect of a tax period shall be an amount determined in accordance with the formula—

$$T = (A + H) \times (1 - \frac{K}{L})$$

in which formula—

(a) "T" represents the taxable amount to be determined;

(b) "A" represents the income as determined in accordance with the provisions of section 3 in respect of such tax period;

(c) "H" represents such amounts which an insurer has allocated to such retirement fund in terms of section 9 during such tax period;

(d) "K" represents the actuarial value of liabilities in respect of pensioners, including any contingent annuity payable on the death of a pensioner, but excluding the actuarial value of any annuity purchased from an insurer by such retirement fund in respect of any obligation to a pensioner of such retirement fund, calculated at the date of the relevant valuation referred to in the definition of "actuarial value"; and

(e) "L" represents the actuarial value of all assets of such retirement fund (excluding the actuarial value of any annuity purchased from an insurer by such retirement fund in respect of any obligation to a pensioner of such retirement fund) calculated at the date of the relevant valuation referred to in the definition of "actuarial value".

(2) Where the amount represented by the symbol "P", as contemplated in paragraph *(c)* of this subsection, is greater than 50 per cent of the amount represented by the symbol "N", as contemplated in paragraph *(b)* of this subsection, the amount represented by the symbol "T" as contemplated in subsection (1), may be limited to an amount equal to an amount determined in accordance with the formula—

$$M = \frac{N}{2 \times P} \times T$$

in which formula—

(a) "M" represents the limited amount to be determined;

(*b*) "N" represents the market value of all assets of such retirement fund as at the end of the last financial year of such retirement fund before the commencement of the relevant tax period;

(*c*) "P" represents the market value of all interest and rental-bearing assets of such retirement fund, included in symbol "N"; and

(*d*) "T" represents the amount contemplated in subsection (1)*(a)*.

Payment of tax on retirement funds

6. The tax on retirement funds shall be paid by the fund to the Commissioner within three months after the end of each tax period and shall be accompanied by a return in such form as the Commissioner may require.

Payment of provisional tax

7. (1) Every fund shall, in the manner provided in this section, make two payments (called provisional tax) to the Commissioner in respect of its liability for the tax on retirement funds in respect of every tax period.

(2) The first provisional tax payment payable by a fund in respect of each tax period shall be an amount equal to 50 per cent of the actual amount of the tax on retirement funds payable by such fund in respect of its immediately preceding tax period or such other amount, as may be approved by the Commissioner, having regard to the circumstances of the case.

(3) The first provisional tax payment payable by every fund in respect of each tax period shall be paid to the Commissioner, in so far as it relates to the tax period falling between—

(*a*) 1 March to 31 August, by not later than the last day of May falling within such tax period; and

(*b*) 1 September to the last day of February, by not later than the last day of November falling within such tax period:

Provided that no first provisional tax payment shall be payable by a fund in respect of the tax period 1 March 1996 to 31 August 1996.

(4) The second provisional tax payment payable by a fund in respect of each tax period shall be an amount equal to 90 per cent of the actual amount of the tax on retirement funds payable, as determined in terms of this Act, by such fund in respect of such tax period, reduced by the first provisional tax payment actually paid by such fund in respect of such tax period.

(5) The second provisional tax payment payable by every fund in respect of each tax period, shall be paid to the Commissioner by not later than 25 days after the end of each tax period.

(6) Each provisional tax payment shall be accompanied by a return in such form as the Commissioner may require.

(7) There shall be set-off against the liability of a fund in respect of the tax on retirement funds due in respect of any tax period, the amount of any provisional tax paid by such fund in respect of such tax period.

Person liable for tax

8. (1) The person liable for the tax shall be—

(*a*) the insurer, in respect of the taxable amount of the relevant untaxed policyholder fund determined in terms of section 4; or

(*b*) the retirement fund, in respect of the taxable amount of such retirement fund determined in terms of section 5.

(2) The person responsible for performing the duties prescribed in terms of this Act in respect of any retirement fund or any untaxed policyholder fund of an insurer—

(*a*) to which the provisions of the Pension Funds Act, 1956 (Act No. 24 of 1956), apply, shall be the principal officer or, if the retirement fund is in liquidation, the liquidator, as contemplated in the last-mentioned Act;

(b) which constitutes a company, shall be the public officer contemplated in section 101 of the Income Tax Act, or in the case of a company in liquidation, the liquidator; or

(c) not falling within the provisions of paragraph (a) or (b), shall be a person appointed by the retirement fund or insurer within 30 days after the promulgation of this Act, which person performs functions similar to that of a principal officer, public officer, liquidator or person acting in a representative capacity,

as the case may be.

Allocation by insurer of income to retirement fund

9. Where a retirement fund, which participates in the untaxed policyholder fund of an insurer, has had income allocated to it by such insurer during a tax period, such income shall be—

(a) included during such tax period in the retirement fund's taxable amount by way of symbol "H" in accordance with the formula contemplated in section 5; and

(b) excluded, during the tax period of the insurer in which the allocation was so made, from such insurer's untaxed policyholder fund by way of symbol "B" in accordance with the formula contemplated in section 4.

Notification of income allocated

10. (1) Where an insurer has allocated any income to a retirement fund as contemplated in section 9, such insurer shall notify—

(a) such retirement fund within 14 days of the last day of the relevant tax period; and

(b) the Commissioner by not later than three months after the end of such tax period,

of the amount of the income so allocated.

(2) The allocation contemplated in subsection (1) shall be in such form as the Commissioner may require.

(3) Where an insurer fails to comply with the provisions of subsection (1) or (2), the provisions of section 9 shall not apply.

Interest on late payment of tax

11. Where any retirement fund or insurer fails to pay any tax for which it is liable in full before or on the last date of payment as prescribed by section 6 or 7, as the case may be, interest shall be paid by such retirement fund or insurer, as the case may be, on the balance of the tax outstanding at the prescribed rate as defined in section 1 of the Income Tax Act, reckoned, in so far as it relates to the payment of any—

(a) tax on retirement funds as referred to in section 6, from the end of the three months' period contemplated in that section;

(b) first provisional tax payment as referred to in section 7(3), from the last day of the relevant month contemplated in that section; or

(c) second provisional tax payment as referred to in section 7(5), from the end of the relevant tax period contemplated in that section,

as the case may be.

Penalty for failure to pay tax when due

12. Where any retirement fund or insurer fails to pay the tax for which it is liable before or on the last date of payment as prescribed by section 6 or 7, as the case may be, such retirement fund or insurer, as the case may be, shall, in addition to the interest payable in terms of section 11, pay to the Commissioner a penalty equal to 10 per cent of the amount of such tax not paid on or before such last date of payment: Provided that the Commissioner may, having regard to the circumstances of the case, remit the penalty imposed under this section or any part thereof.

Assessment by Commissioner

13. Where the Commissioner is satisfied that any amount of tax has not been paid or has not been paid in full, the Commissioner may make a reasonable estimate of the unpaid amount and issue to the retirement fund or insurer concerned, as the case may be, a notice of assessment of the unpaid amount.

Accrual and incurral of interest

14. (1) The provisions of section 24J of the Income Tax Act shall apply *mutatis mutandis* for the purposes of determining the income of a fund and where any instrument held by such fund on 1 March 1996 was issued to or transferred to, as the case may be, such fund before that date, such fund may elect that the provisions of such section shall be deemed to have been applicable to such instrument from—

(a) 1 March 1996, and in such instance—
  (i) such instrument shall for the purposes of such section be deemed to have been issued on 1 March 1996; and
  (ii) the initial amount in relation to such instrument shall for the purposes of such section be deemed to be the market value of such instrument on 1 March 1996; or

(b) the date of issue or transfer of such instrument, as the case may be, to such fund.

(2) For the purposes of subsection (1) any reference in—

(a) section 24J of the Income Tax Act to a year of assessment, shall be construed as a reference to a tax period; and

(b) the definition of "accrual period" in section 24J(1) of the Income Tax Act, to a period of 12 months, shall be construed as a reference to one month or such longer period as the Commissioner, having regard to the circumstances of the case, may approve.

Discretion of Commissioner

15. Any decision by the Commissioner in the exercise of his or her discretion under this Act shall be subject to objection and appeal.

Applicability of Income Tax Act

16. The provisions of the Income Tax Act relating to—

(a) the administration thereof as contained in Chapter I of the Income Tax Act;
(b) the production of documents and evidence on oath;
(c) penalty on default;
(d) additional tax in event of default or omission;
(e) assessments;
(f) objections and appeals;
(g) the recovery of tax;
(h) refunds; and
(i) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income,

shall, having regard to the context within which such provisions are applied, *mutatis mutandis* apply in—

(i) the administration of this Act;
(ii) the production of documents and evidence on oath for the purpose of obtaining full information in respect of any income received by or accrued to or expenditure incurred by any fund;
(iii) any refusal or failure by any fund to furnish any information or reply or to attend to or give evidence as and when required by the Commissioner or any officer duly authorised by him or her or to answer truly and fully any questions put to it or to produce any books or papers required of it by the Commissioner or any such officer;

(iv) any default by a fund in rendering a return, any omission by any fund from its return of any amount which ought to have been included therein or any incorrect statement made by any fund in its return;
(v) any assessment, objection and appeal and the recovery or refund of the tax; and
(vi) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing liability for the tax or reducing the amount of such tax and in the application of the provisions contemplated in paragraph *(i)*, such provisions shall be deemed to include a reference to the tax.

Short title

17. This Act shall be called the Tax on Retirement Funds Act, 1996, and shall be deemed to have come into operation on 1 March 1996.