

## Dealing with Unclaimed Benefits

### Background

Although unclaimed benefits have been defined in the Pension Funds Act ('the Act') since 1 November 2008, many funds are still unsure as to what an unclaimed benefit is and how this liability can be managed.

### What is an Unclaimed Benefit?

The Act defines an unclaimed benefit as any benefit not paid by a fund to a member, former member or beneficiary within 24 months of the date on which, in terms of the rules of the fund, the benefit became legally due and payable and includes a benefit payable as a pension or annuity.

The definition also includes benefits payable to a former member who could not be traced as part of a Surplus Apportionment Scheme and any benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund deregisters or is liquidated.

### What is an Unclaimed Benefit Fund?

Although the definition of unclaimed benefits is relatively new, the principle is not and many funds have substantial numbers of unclaimed benefits, in some cases more than the number of active members on the fund.

The legislative changes allow for the unclaimed benefits to be transferred to an unclaimed benefit fund. Unclaimed pension fund benefits must be transferred to an unclaimed benefits pension fund. Similarly unclaimed provident fund benefits must be transferred to an unclaimed benefits provident fund.

These are funds managed by their own management board that must be registered with the Financial Services Board ("FSB") and approved by SARS.

### What Trustees Need to Consider

Trustees should apply their minds as to the extent they wish to use unclaimed benefit funds, if at all. The departure point will be the current fund strategy for dealing with unclaimed benefits. Trustees will then need to decide if they wish to maintain the current practice, modify it or transfer the benefits to an unclaimed benefit fund.

The investment strategy and plans for tracing members require particular attention. Ideally, the investment strategy should protect members' capital while at the same time providing growth in excess of inflation. Strategies range from ring-fencing assets and having a dedicated investment strategy to simply using a bank account.

A lesson learned from surplus apportionment exercises was that it took a considerable time to trace former members and this experience will be no different than that of tracing of unclaimed benefits.

Also the administrative burden and associated cost to retain unclaimed benefits in the fund needs to be compared to the fee structures of unclaimed benefit fund. The charging structures are quite similar with fees charged per member per month and deducted monthly. This makes the comparison easier. Careful consideration must be given to whether these fees are inclusive of tracing.

Taxation is not a consideration as General Note GN35, which related to the treatment of funds of unclaimed benefits arising as a consequence of the termination of employment, no longer applies to benefits that have become unclaimed with effect from 1 January 2009. Therefore, no unclaimed benefit tax will be levied regardless of whether it is transferred to an unclaimed benefit fund or retained in the fund. Similarly, until a cash benefit is paid to a member, no withdrawal tax is payable.

Unfortunately, there is not consensus as to the appropriate way to pay all unclaimed benefits to unclaimed benefit funds, should trustees adopt this strategy. The FSB is of the opinion that a Section 14 would not be required and a contrasting view from the Institute of Retirement Funds ("IRF") is that it will be required. Funds should seek advice from their consultant, administrator and chosen unclaimed benefit fund.

### Closing Remarks

The use of unclaimed benefit funds is a critical decision in the unclaimed benefit policy. A principal advantage of using unclaimed benefit funds is that the responsibility for the members is the sole duty of the management board of the unclaimed benefit fund. In addition, dedicated tracing of all benefits coupled with a focused investment strategy to conserve the invested values could be beneficial to the successfully traced member.

However, the fund's current members may mistake the use of these funds for the employer shirking responsibility and not caring for employees.

It is highly recommended that every fund should have a comprehensive unclaimed benefit fund policy document detailing the fund's practice. Should the fund not make use of unclaimed benefit funds, the policy should include the investment strategy and administration practice.

