The effect of the Taxation Laws Amendment Act 25 of 2016 on retirement planning

Mini-dissertation submitted in partial fulfilment of the requirements for the degree *Magister Legum* in Estate Law at the Potchefstroom Campus of the North-West University

By

A van den Berg

20259611

Supervisor: A Vorster

November 2016

SUMMARY

When the tax treatment of pension and provident funds before and after the implementation of the *Taxation Laws Amendment Act* 25 of 2016 is compared, the positive effect of this Act on retirement planning becomes clear. The alignment of the tax treatment of pension and provident funds, tax incentives for employers and employees and tax-free investments, is for the best and it will motivate South Africans to save for their retirement, which will lead to fewer vulnerable households.

The big question is whether the alignment of the tax treatment of pension and provident funds, tax incentives for employers and employees and tax-free investments are sufficient to increase the percentage of individuals who can retire comfortably.

The fund management issues that the members of retirement funds experience, namely inadequate communication with and from funds, is the thorn in the flesh that prevents the *Taxation Laws Amendment Act* 25 of 2016 from being a success.

The trustees of retirement funds will only be fulfilling their fiduciary duties as delineated in article 7 of the *Pension Fund Act* 24 of 1956, if they protect the interests of the members of retirement funds by ensuring that adequate and suitable information on members' rights, benefits and duties in terms of the rules of the funds are communicated to the members and the beneficiaries. Even though the Council on Financial Services has sent out numerous Pension Fund Circulars that specifically deal with communication requirements, these circulars are not law and they cannot be enforced.

If a member of a pension fund does not receive adequate information from his or her fund, the person's only remedy is to lay a complaint with the Office of the Pension Funds Adjudicator. A discussion of several rulings of the Office of the Pension Funds Adjudicator makes it clear that funds are only given a slap on the wrist if they fail to provide their members with benefit statements.

The study makes several recommendations about how the Council of Financial Services and the Office of the Pension Funds Adjudicator can go about ensuring a better communication system or structure between retirement funds and its members.

If retirement funds inform their members properly on the value of their benefits and how their retirement funds or lump sum are calculated and taxed, they will be informed about what their benefits are at any point and how much they still need to save to retire independently. Members will be able to do proper retirement planning, a right to which all hard-working South Africans are certainly entitled.

Keywords:

Retirement planning / *Taxation Laws Amendment Act* / *Pension Funds Act* / tax / pension contributions / lump sum / reform retirement / national treasury / benefits statements / pension benefits / retirement fund / provident fund / fund administration / communication / fiduciary duties / trustees / tax incentives / employer / employee

OPSOMMING

Wanneer die belastinghantering van pensioen- en voorsorgfondse voor en na die implementering van die *Wysigingswet op Belastingwette* 25 van 2016 met mekaar vergelyk word, word die positiewe uitwerking van die Wet op aftreebeplanning duidelik sigbaar. Die belyning van die belastinghantering van pensioen- en voorsorgfondse, belastingaansporings vir werkgewers en werknemers en belastingvrye beleggings is vir die beste en sal Suid-Afrikaners motiveer om meer vir hulle aftrede te spaar, wat uiteindelik sal lei tot minder kwesbare huishoudings.

Die groot vraag is egter of die belyning van die belastinghantering van pensioen- en voorsorgfondse, belastingaansporings vir werkgewers en werknemers en belastingvrye beleggings voldoende maatreëls sal wees om die persentasie van individue wat gemaklik kan aftree, sal verhoog.

Die fondsbestuurskwessies wat lede van aftree fondse ervaar, naamlik 'n gebrek aan kommunikasie tussen hulleself en die fondse, is die klippie in die skoen wat verhinder dat die implementering van die *Wysigingswet op Belastingwette* 25 van 2016 ʼn sukses kan wees.

Trustees van aftreefondse sal slegs aan hulle fidusiêre pligte, soos uiteengesit in artikel 7 van die *Wet op Pensioenfondse* 24 van 1956, voldoen indien hulle die lede van aftreefondse se belange beskerm en verseker dat voldoende en toepaslike inligting rakende hulle regte, voordele en pligte ingevolge die reëls van die fonds aan die lede en begunstigdes van die fonds gekommunikeer word. Selfs al het die Raad op Finansiële Dienste verskeie Pensioenfonds Omsendbriewe uitgereik wat spesifiek handel oor kommunikasie vereistes, is hierdie omsendbriewe nie wet nie en het dit geen afdwingbare effek nie.

Indien ʼn lid van ʼn pensioenfonds nie voldoende inligting vanaf sy of haar fonds ontvang nie, is sy of haar enigste remedie om 'n formele klag by die Kantoor van die Pensioenfondsberegter in te dien. ʼn Bespreking van verskeie beslissings van die Kantoor van die Pensioenfondsberegter maak dit duidelik dat fondse net oor die vingers geraps word wanneer die fonds versuim om sy lede van voordelestate te voorsien.

Verskeie aanbevelings word gemaak oor hoe die Raad van Finansiële Dienste en die Kantoor van die Pensioenfondsberegter te werk kan gaan om 'n beter kommunikasiesisteem of struktuur tussen aftreefondse en sy lede te verseker.

Indien aftreefondse hulle lede behoorlik inlig oor die waarde van hulle voordele en hoe bydraes tot hulle aftree fondse of enkelbedrae bereken en belas word, sal lede ingelig wees oor wat hulle voordele op enige gegewe stadium is en wat hulle nog nodig het om te spaar om onafhanklik af te tree. Lede sal in staat wees om behoorlike aftreebeplanning te doen, 'n reg waarop alle hard werkende Suid-Afrikaners sekerlik geregtig is.

Kernwoorde:

Aftreebeplanning / *Wysigingswet op Belastingwette* / *Wet op Pensioen Fondse* / belasting / pensioenbydraes / lomp som / aftreehervorming / nasionale tesourie / voordelestate / pensioenvoordele / aftreefondse / pensioenfonds / voorsieningsfonds / fondsadministrasie / kommunikasie / fidusiêre verpligtinge / trustees / belastingaansporings / werkgewer / werknemer

TABLE OF CONTENTS

LIST OF TABLES

LIST OF ABBREVIATIONS

JEF	Journal of Economic and Financial Sciences
MONEYM	MoneyMarketing
RLB	Retirement Lump Sum Benefit
RLWB	Retirement Lump Sum Withdrawal Benefit
SARS	Commissioner for the South African Revenue Services
FSB	Financial Services Board
PELJ	Potchefstroom Electronic Law Journal
PUBLIC ADM.	Journal of Public Administration and Policy Research
FAIS	*Financial Advisory and Intermediary Services Act* 37 of 2002

1 Introduction and problem statement

According to the Department of National Treasury,[1] only approximately 10% of working South Africans can maintain their standard of living after retirement.[2] Reasons for this include that South Africans do not preserve their pension savings[3] and are not educated enough on pension savings.[4] The outcome of this environment is that fund members do not know how contributions to their retirement funds are calculated, taxed,[5] or what their benefits are in the event of death, early withdrawal, disability or retirement.[6] This leads to poor retirement planning.

National Treasury has been compelled to commence with the retirement reform process in 2012.[7] One of the biggest aims of retirement reform is to create tax incentives for members of retirement funds in the hope that people would be encouraged to save more[8] and become less dependent on the State and/or family members upon retirement. If National Treasury succeeds in its efforts, it can help to reduce financial vulnerability of households and get people in the habit of saving for their retirement.[9] They further aimed to simplify the taxation of retirement contributions[10] by introducing the same tax treatment not only for retirement contributions, but also on the withdrawal of lump sums from the member's benefits.[11]

1 Herein after referred to as National Treasury.
2 De Beer 2014 *JEF* 185.
3 Du Preez 2014 http://www.fin24.com/Savings/Tools/8-points-to-clarify-retirement reform.
4 Caims 2015 *Moneyweb* 9.
5 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/.
6 Anon 2015 http://www.fanews.co.za/article/compliance-regulatory/2.
7 Department of National Treasury 2015 http://www.treasury.gov.za/publications/RetirementReform.
8 Rossouw 2016 *MoneyM* 21; Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Incentivising.
9 Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Incentivising.
10 Lamprecht 2016 *Tax Breaks Newsletters* 4; Department of National Treasury 2015 http://www.treasury.gov.za/comm_media/press/2015.
11 Pricewaterhouse 2016 *Tax Alert* 1.

The new *Taxation Laws Amendment Act*[12] was introduced, containing the new retirement fund rules that had come into effect on 1 March 2016.[13]

The most common retirement funds are pension, provident and retirement annuity funds.[14] To date, all three of the mentioned funds have functioned under their own set of rules, terms and conditions.[15] These funds have also been treated differently for tax purposes.[16]

National Treasury made a real effort and as of 1 March 2016 the tax treatment of the different funds have been aligned in certain ways.[17]

However, the pebble in the shoe is the current retirement funds and their lack of communication with members.[18] Currently, all complaints relating to pension and provident funds are referred to the Office of the Pension Funds Adjudicator (hereinafter referred to as Funds Adjudicator).[19] Fifty-seven per cent of all complaints received are that members are unhappy about the ultimate benefit that they received from their pension or provident fund.[20] These complaints occur because of poor communication between the fund managers and fund members.[21] What National Treasury fails to keep in mind is that tax incentives and planning is useless if it is not

12 *Taxation Laws Amendment Act* 25 of 2016 (hereinafter referred to as the *Taxation Laws Amendment Act*).
13 Kamdar 2016 *Tax Professional* 17; Anon 2015 *MoneyM* 5.
14 S1 of the *Income Tax Act* 52 of 1962 (herein after referred to as the *Income Tax Act*); Schoeman and Nhabinde 2009 *J. Public Adm. Policy Res.* 1082.
15 S1 of the *Income Tax Act*; Botha *et al The South African Financial Planning Handbook* 880-883.
16 S1 of the *Income Tax* Act; Botha *et al The South African Financial Planning Handbook* 879. This study focuses on retirement funds where there are an employer–employee relationship and does not elaborate on individual retirement platforms.
17 National Treasury 2016 *Moneyweb* 6.
18 Nevondwe and Ramatji 2014 *J. Public Adm. Policy Res.* 278.
19 Botha *et al The South African Financial Planning Handbook* 933.
20 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/.
21 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/.

incorporated in retirement planning, “planning” that can only be done with all relevant information at hand.

Section 7 of the *Pension Funds Act* [22] stipulates the duties of trustees of retirement funds, specifically their duty to provide adequate and appropriate information to the members regarding their rights, duties and benefits.[23] Even though the *Pension Funds Act* is law, retirement funds do not adhere to these provisions.[24]

The aim of this research is to analyse if the alignment of tax treatment and tax incentives alone will be sufficient to meet National Treasury’s aims, and secondly, how the lack in communication between funds and their members, which is preventing effective retirement planning, can be addressed.

Chapter 2 will give a brief overview of the basic pension and provident fund principles. Thereafter the tax implications on both of these funds before the implementation of the Taxations Laws Amendment Act are summarised and then the aligned taxation rules of pension and provident fund after 1 March 2016 are discussed.

Chapter 3 explains the fund governance issues, the pebble in the shoe – a lack of communication between funds and their members that is clearly exposed in relevant case law.

Chapter 4 emphasises that the aims of National Treasury to improve the process of retirement reform is irrelevant if the standards of fund governance and protection of members’ interest are not met. The chapter seeks to offer recommendations to address the problem.

---

22 *Pension Funds Act* 24 of 1956 (hereinafter referred to as the *Pension Funds Act*).
23 S7D of the *Pension Funds Act*; *Botha et al The South African Financial Planning Handbook* 897.
24 See Chapter 3 below.

The final chapter concludes by presenting the findings and explains that the good intentions of National Treasury will be worthless and ineffective without implementing a proper strategy to better communication between funds and their members.

2 Overview of taxation of pension and provident funds

2.1 Introduction

One of the main objectives of this study is to have a closer look at pension and provident funds and further retirement planning. It is important first to take a brief overview of these funds before turning to the taxation of pension and provident funds, before and after the implementation of the *Taxation Laws Amendment Act*.

2.2 Background

In South Africa, prior to the 18th and 19th century, it was accepted that employers had a moral obligation to look after their employees financially once they had reached an age where they cannot work anymore[25] due to ill health or old age.[26] The employer's moral obligation compelled them to provide monies from their own funds to maintain a retired employee.[27] This benefit was usually only granted to employees who reached retirement age while in employment of the employer.[28]

Sadly, with the passing of time, employers began to focus more and more on the productivity and success of their businesses and became more reluctant to support employees who no longer contribute to their business.[29] It became clear to employers that a system had to be implemented that would allow for the pre-funding of retirement benefits that an employee receives at the end of his career.[30] The first

25 Reddy *What do individuals think about compulsory preservation funding?* 14; Bekker 2003 *An assessment: Defined contribution funds and retirement* 2.
26 George 2006 *Analysis of the South African pension fund conversions: 1980-2006; developing a model for dealing with environmental changes* 3.
27 Bekker 2003 *An assessment: Defined contribution funds and retirement* 2.
28 Hunter *"Legislative changes that should be made in order to more properly reflect the pension promise that an employer makes to its employees and to better protect retirement savings"* 6.
29 Reddy *What do individuals think about compulsory preservation funding?* 14.
30 Reddy *What do individuals think about compulsory preservation funding?* 14.

record that could be found of pension provision in South Africa dates back to 1937 when the British started paying pensions to their military staff.[31]

Prior to the *Pension Funds Act,* which was promulgated in 1956,[32] funds were administered in terms of the common law.[33] With the implementation of the said Act, government aimed to supervise retirement funds to insure that an employee who contributed during his career, would receive his benefits at retirement.[34]

The *Pension Funds Act* defines a "pension fund" as:

> 1) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members; or
>
> 2) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons;
>
> 3) any association of persons or business carried on under a scheme or arrangement established with the object or receiving, administering, investing and paying benefits that became payable in terms of the employment of a member on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds…[35]

This definition includes three types of retirement funds, one of which is an occupational scheme. Occupational schemes are funds that are established by an employer for the benefit of his employees, such as a pension or provident fund. For an occupational scheme to be valid there must be an employer–employee relationship

31 George 2006 *Analysis of the South African pension fund conversions: 1980-2006: developing a model for dealing with environmental changes* 3.
32 Dennis 2013 *Section 37C of the Pensions Funds Act, 37 of 1956: A social security measure to escape destitution* 1.
33 Reddy *What do individuals think about compulsory preservation funding?* 14.
34 Reddy *What do individuals think about compulsory preservation funding?* 14.
35 S1 of the *Pension Funds Act*.

and membership to the fund is a condition of employment for all persons who fall within the group of people for whom the fund was established.[36]

Occupational funds such as pension and provident funds are not only for the benefit of employees,[37] but also for the benefit of the employer.[38] Not only do the employees (members of the fund) enjoy a tax benefit,[39] but they also tend to stay employed with an employer for longer if they know that adequate provision is made for their retirement.[40] For the employer, these types of funds provide a tax benefit,[41] but more importantly, they offer employers stability in their businesses. Employees tend not to change jobs so often if they know provision is made for their retirement,[42] which leads to overall efficiency and performance of the employer's business.[43] Pension and provident funds also relieve an employer of his moral duty to maintain and support an employee and his or her family after retirement or death.[44]

It should be noted that the *Pension Funds Act* includes both pension and provident funds under the definition, but does not differentiate these two funds.[45] Therefore, the *Pension Funds Act* is applicable to both funds.[46]

---

36 Botha *et al The South African Financial Planning Handbook* 876-885.
37 Anon 2015 *MoneyM* 19.
38 Botha *et al The South African Financial Planning Handbook* 880; Bekker 2003 *An assessment: Defined contribution funds and retirement* 3.
39 Botha *et al The South African Financial Planning Handbook* 880; Anon 2015 *MoneyM* 19. See parr 2.4.2 and 2.5.2 below.
40 Anon 2016 *MoneyM* 23; Botha *et al The South African Financial Planning Handbook* 880.
41 Botha *et al The South African Financial Planning Handbook* 880. See parr 2.4.1 and 2.5.1 below.
42 George 2006 *Analysis of the South African pension fund conversions: 1980-2006; developing a model for dealing with environmental changes* 4.
43 Anon 2016 *MoneyM* 23.
44 George 2006 *Analysis of the South African pension fund conversions: 1980-2006; Developing a model for dealing with environmental changes* 2; Botha *et al The South African Financial Planning Handbook* 880.
45 Botha *et al The South African Financial Planning Handbook* 875.
46 Botha *et al The South African Financial Planning Handbook* 875.

Just to clarify, even though the *Pension Funds Act* does not differentiate between the funds, there are differences between these funds. The most substantial difference between the two funds is: on date of retirement, a ***pension fund*** provides a maximum of one third cash payment to the member and with the other two thirds the member must buy an annuity, while a ***provident fund*** allows a hundred present cash payment on retirement.[47]

It is, however, important to bear in mind that the contributions or withdrawals from these funds are taxed in different ways and this should be explained in brief, especially with reference to the position before and after the *Taxation Laws Amendment Act*.

2.3 Taxation of fund benefits before 1 March 2016

When a benefit becomes payable to a fund member, the member receives a lump sum. The lump sum that an employee receives from his retirement fund can be classified into two groups.[48] These lump sums are classified on the events leading up to the payment of the benefit.[49] The first group is the retirement lump sum benefit (hereinafter referred to as RLB). For example, when a member of a pension fund retires, the member is allowed to withdraw one third of his total benefit in cash, while he must buy an annuity with the remaining two thirds of the benefit[50] to provide him with regular pension payments.[51] The third lump sum that he receives is a RLB.

---

47 National Treasury 2016 *Moneyweb* 6; George 2006 *Analysis of the South African pension fund conversions: 1980-2006; Developing a model for dealing with environmental changes* 2; Godden 2010 *TAXtalk* 24. This difference between pension and provident funds may soon be one of the past, since National Treasury aims to amend the rules regarding the annuitisation of provident fund benefits. The proposed changes have not yet been approved, but are being negotiated.

48 Stiglingh *et al Silke: South African Income Tax* 402.

49 Stiglingh *et al Silke: South African Income Tax* 402.

50 George 2006 *Analysis of the South African pension fund conversions: 1980-2006; Developing a model for dealing with environmental changes* 2.

51 Godden 2010 *TAXtalk* 24.

The second group of lump sum benefit is the retirement lump sum withdrawal benefit (herein after referred to as the RLWB).[52] These types of lump sums are paid out to the member before retirement.

As soon as a member receives a lump sum (either RLB or RLWB), it becomes taxable.[53] The *Income Tax Act*[54] contains the law related to the taxation of a taxpayer's income.[55]

The term taxable income is defined in Section 1 of the *Income Tax Act* as income less deductions allowed by the Act, plus any amounts included or deemed to be included in taxable income by the Act. Income is defined as "gross income" less amounts exempt from the *Income Tax Act*.[56]

Gross income is defined by the *Income Tax Act* as:

> Gross income, in relation to any year or period of assessment, means –
>
> 1) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or
>
> 2) in the case of any person other than a resident, the total amount, in cash or otherwise received by or accrued to or in favour of such person from a source within or deemed to be within the Republic,
>
> 3) during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder…[57]

Even though section 37A(1) of the *Pension Funds Act* prohibits the alienation of pension benefits in any form, section 37D(1)(a) of the *Income Tax Act* provides that

52 Stiglingh *et al Silke: South African Income Tax* 402.
53 Botha *et al The South African Financial Planning Handbook* 940.
54 *Income Tax Act* 52 of 1962 (herein after referred to as the *Income Tax Act*).
55 Van Rensburg 2014 *An overview of taxation in the South African retirement funding industry* 11.
56 S1 of the *Income Tax Act*.
57 S1 of the *Income Tax Act*.

a pension fund may be deducted from a member's benefit, any amount due by the member in terms of the *Income Tax Act.*[58]

The amount of tax that the member would be liable for depends on whether the member received a RLB or a RLWB.[59] After a member receives his lump sum, whether it is a RLB or RLWB, certain deductions are afforded to him in terms of the fifth and six schedule of the *Income Tax Act.*[60]

A short overview of the two funds and their current taxation rules now follows. The pension fund is discussed first, and thereafter the provident fund.

2.4 Pension fund

A **pension fund** is established by an employer for the benefit of his employees[61] and as previously mentioned, the main objective of this fund is to provide its members with a regular income after retirement[62] or to provide a deceased member's dependants or nominees with benefits.[63] Members of a pension fund may also contribute to the fund, but in most instances, the employer is the main contributor.[64] Members and employers contribute to the fund until the member withdraws his

---

58 The *Pension Funds Act* does not differentiate between pension and provident funds, but includes both under the definition of a pension fund organisation. Therefore, the Pension Funds Act, including S37A, is applicable to provident funds and pension funds.
59 Botha *et al The South African Financial Planning Handbook* 940.
60 Botha *et al The South African Financial Planning Handbook* 940.
61 S1 of the *Income Tax Act*; Botha *et al The South African Financial Planning Handbook* 882; Godden 2010 *TAXtalk* 24.
62 Anon Date unknown https://www.10x.co.za/corporate/corporate-investors/starting-a- retirement-fund/product-pension-fund-or-provident-fund/.
63 Van Rensburg 2014 *An overview of taxation in the South African retirement funding industry* 16.
64 Godden 2010 *TAXtalk* 24.

pension benefit or retires.[65] These contributions are invested and then used to pay the costs of running the fund and to pay out the benefit of the member.[66]

The contributions made by the employer and or employee are usually calculated as a percentage of the member's salary.[67] As the member's salary increases, contributions to the fund increases accordingly.[68]

Pension fund members are only allowed to withdraw one third of their retirement savings as a lump sum on retirement.[69] The other two thirds must buy an annuity.[70]

The taxation law prior to 1 March 2016 is now discussed.

2.4.1 The taxation of employer contributions (pension fund)

Section 11 of the *Income Tax Act* contains a list of all the allowable deductions in determining the taxable income of a taxpayer (employer). Section 11(I) allows an ***employer*** who contributes to an employee's pension fund to claim a ***deduction of his contributions up to 20% of the employee's retirement funding*** income against his taxable income.[71]

Payments that an employer makes to his employees in any other form than cash, is seen as a fringe benefit.[72] The value of this "benefit" is then included in the employee's

---

65 Godden 2010 *TAXtalk* 24.
66 The South African Labour Guide date unknown http://www.labourguide.co.za/general/499-pension-and-provident-funds.
67 Botha *et al The South African Financial Planning Handbook* 907.
68 Botha *et al The South African Financial Planning Handbook* 907.
69 Botha *et al The South African Financial Planning Handbook* 940.
70 Botha *et al The South African Financial Planning Handbook* 940.
71 Kokott *The evaluation of different retirement investment options as savings and tax planning tools* 32.
72 Ostler 2012 http://www.schoemanlaw.co.za/wp-content/uploads/2012/12/Fringe-Benefits-Article.pdf. An example of a fringe benefit is in the case where the employer pays the employee's medical aid or part thereof.

gross income and he or she is taxed thereon.[73] But, contributions to funds made by employers, are be seen as a fringe benefit and they are not taxed in the hands of the employee.[74]

2.4.2 The taxation of employee contributions (pension fund)

The deductions that an employee may claim against his or her income are limited.[75] More specifically, section 23(m) does not allow the deduction of any:

> expenditure, loss or allowance, which relates to any employment of, or office held by, any person (other than an agent or representative whose remuneration is normally derived mainly in the form of commissions based on his or her sales or the turnover attributable to him or her) in respect of which he or she derives any remuneration, as defined in paragraph 1 of the Fourth Schedule of the Act..[76]

However, there is a specific exception that the contributions made by an employee to a pension fund may be deducted.[77]

Section 11(k) of the *Income Tax Act* stipulates that when a member contributes to a pension fund, his deduction is limited to the greater of R1 750.00 or 7.5% of his income from "retirement-funding income". Retirement-funding income refers to:

> …that part of the employee's income that is taken into account in the determination of the contributions made by him/her or on his/her behalf to a pension or provident fund.[78]

---

73 Parr 2(a) and 5 of the 7th Schedule to the *Income Tax Act*; Ostler 2012 http://www.schoemanlaw.co.za/wp-content/uploads/2012/12/Fringe-Benefits-Article.pdf.

74 Par 2 of the 7th Schedule of the *Income Tax Act*.

75 S23 of the *Income Tax Act*.

76 S23(m) of the *Income Tax Act*.

77 See S23(m)(i-iii) of the *Income Tax Act*.

78 S11(k) of the *Income Tax Act*; Kokott *The evaluation of different retirement investment options as savings and tax planning tools* 34. However, any excess contributions (in excess of the section 11(k) deduction allowed) to a pension fund may not be carried forward to the following year of assessment. If there are any pension fund contributions of the member in arrears, the tax deduction available to the member is R1 800.00 per annum. Under these circumstances, any excess above R1 800.00 may be carried over to the next tax year.

2.4.3 *Prior to retirement*

A member of a pension fund may withdraw from his pension fund benefits prior to retirement.[79] The lump sum that a member receives is referred to as a RLWB. When an employee decides to partially withdraw from his pension fund benefits before retirement, the employee not only reduces his tax free lump sum that he would receive on date of retirement,[80] but also becomes subject to a higher tax rate than usual on date of retirement.[81]

The different RLWB are listed in paragraph 2(1)(b) of the second schedule of the *Income Tax Act*. Any one of the different RLWBs is included in a taxpayer's gross income.[82] The taxpayer is taxed on the full amount of the lump sum that he withdrew.[83] Certain deductions are included in paragraph six of the second schedule to the *Income Tax Act* that may be deducted from a RLWB.[84]

After the relevant deductions had been deducted, the remainder is taxed according to that year's RLWB table. During 2016, an employee's RLWB would have been taxed as follows:[85]

---

79 Anon 2015 https://www.10x.co.za/publications/impact-of-the-retirement-reform-coming-into-effect-march-2016/.
80 Anon date unknown http://www.vanrooyenraath.co.za/financial-literacy/double-tax-liability-early-withdrawal-retirement-benefits.
81 Anon date unknown http://www.vanrooyenraath.co.za/financial-literacy/double-tax-liability-early-withdrawal-retirement-benefits.
82 Paragraph 2(1)(b) of the 2nd schedule to the *Income Tax Act*.
83 Botha *et al The South African Financial Planning Handbook* 943.
84 Botha *et al The South African Financial Planning Handbook* 943.
85 Anon 2015 http://www.sars.gov.za/Tax-Rates/Income-Tax/Pages/Retirement-Lump-Sum-Benefits.aspx.

Table 1

Taxable income (R)	Rate of tax (R)
0 - 25 000	0%
25 001 - 660 000	18% of the amount above 25 000
660 001 - 990 000	114 300 + 27% of the amount above 660 000
990 001 and above	203 400 + 36% of the amount above 990 000

Any lump sum a member receives is taxed in the year of assessment during which the lump sum benefit is deemed to have accrued.[86] In terms of section 4(1) of the second schedule to the *Income Tax Act,* it is deemed that a lump sum benefit accrued to a member on the:

1) Earliest date on which an election is made by the member and the benefit becomes recoverable because of the election;[87]

2) Earliest date on which an amount, in terms of section 37D(1)(a), (b) or (c) of the Pension Funds Act, is deducted from the benefit;[88]

3) Earliest date on which the benefit is transferred to another fund;[89]

4) On the member's retirement;[90] or

5) On the member's death.[91]

86 Botha *et al The South African Financial Planning Handbook* 945.
87 Botha *et al The South African Financial Planning Handbook* 945.
88 Botha *et al The South African Financial Planning Handbook* 945.
89 Botha *et al The South African Financial Planning Handbook* 945.
90 Botha *et al The South African Financial Planning Handbook* 945.
91 Botha *et al The South African Financial Planning Handbook* 945.

It should be noted that when a RLWB is transferred to another fund it is deemed, in terms of section 4(1) of the second schedule to the *Income Tax Act*, that the benefit accrued to the member on the date of transfer.

2.4.4 Retirement and death

RLB refers to any amount that a person receives in the form of a lump sum after his retirement, death, the termination or loss of the taxpayer's employment due to the employer ceasing to carry on with business or the taxpayer becoming redundant or the commutation of an annuity.[92] Paragraph (e) of the definition of gross income in Section 1 of the *Income Tax Act* includes a RLB in a taxpayer's gross income.

After the relevant deductions had been deducted,[93] the remainder of the lump sum is taxed according to that year's RLB table. It is important to note that an amount cannot be deducted twice and the deductions cannot exceed the lump sum received by the member.[94] During 2016, an employee's RLB would have been taxed as follows:[95]

Table 2

Taxable income (R)	Rate of tax (R)
0 - 500 000	0%
500 001 - 700 000	18% of the amount above 500 000
700 001 - 1 050 000	36 000 + 27% of the amount above 700 000
1 050 001 and above	130 500 + 36% of the amount above 1 050 000

92 Botha *et al The South African Financial Planning Handbook* 946.
93 Par 6 of the 2nd schedule to the *Income Tax Act*.
94 Botha *et al The South African Financial Planning Handbook* 947.
95 Anon 2015 http://www.sars.gov.za/Tax-Rates/Income-Tax/Pages/Retirement-Lump-Sum-Benefits.aspx.

It is important to note that the tax-free amount of R500 000.00 is cumulative over the member's entire lifetime.[96]

2.4.5 Retirement and death (pension fund)

Retire and retirement means to retire from employment and to become entitled to receive payment of an annuity.[97]

Upon retirement from a pension fund, the employee may withdraw a maximum one third of his benefits, which is payable as a cash lump sum and he must buy an annuity with the other two thirds of his benefit.[98]

After the relevant deductions were deducted, the remainder of the lump sum is taxed accordingly.

In the event of death, his entire pension fund benefit may be taken in the form of a lump sum[99] and it must be deemed to have accrued to that person immediately before

---

96 Kokott *The evaluation of different retirement investment options as savings and tax planning tools* 34.

97 S1 of the *Income Tax Act* defines an retirement annuity as any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the *Pension Funds Act*: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied that the fund is a permanent fund bona fide established for the sole purpose of providing life annuities for the members of the fund or annuities for the dependants or nominees of deceased members. The purpose of a retirement annuity is to provide the member with an income after retirement. There are mainly two options, namely a living annuity and a guaranteed annuity; Van Rensburg 2014 *An overview of taxation in the South African retirement funding industry* 27.

98 Botha *et al The South African Financial Planning Handbook* 940. In the event that an employee's total pension fund benefit is not more than R75 000.00, the entire benefit may be taken as a lump sum.

99 Par 3 of the 2nd schedule to the *Income Tax Act*; Botha *et al The South African Financial Planning Handbook* 939.

his death. The benefit must therefore be taxed in the hands of the deceased member[100] and therefore the lump sum is included in the gross income of his last assessment.[101]

2.5 Provident funds

A **provident fund** is also, like a pension fund, a fund that is established by an employer for the benefit of his employees.[102] As previously mentioned, the main objective of a provident fund is to provide its members with a cash lump sum at retirement date[103] or to provide a cash lump sum to the family members of a deceased member.[104] The difference is that with a provident fund, the members have the option to contribute to the fund themselves, but the employer must contribute to the fund.[105] These contributions are invested and then used to pay the costs of running the fund and to pay benefits to its members.[106]

Once again, the contributions made by the employer and or employee are usually calculated as a percentage of the member's salary.[107] As the member's salary increases, contributions to the fund increases accordingly.[108]

---

100 Williams 2015 *MoneyM* 6; Botha *et al The South African Financial Planning Handbook* 949.
101 Stiglingh *et al Silke: South African Income Tax* 414.
102 S1 of the *Income Tax Act*; Botha *et al The South African Financial Planning Handbook* 882; Godden 2010 *TAXtalk* 24; Liberty Corporate date unknown http://www.libertycorporate.co.za/our-brochures/Documents/our-brochures/all-you-need-to-know.pdf.
103 S1 of the *Income Tax Act*; Botha *et al The South African Financial Planning Handbook* 882; Anon Date unknown https://www.10x.co.za/corporate/corporate-investors/starting-a-retirement-fund/product-pension-fund-or-provident-fund/.
104 S1 of the *Income Tax Act*; Botha *et al The South African Financial Planning Handbook* 882; Liberty Corporate date unknown http://www.libertycorporate.co.za/our-brochures/Documents/our-brochures/all-you-need-to-know.pdf.
105 Godden 2010 *TAXtalk* 24.
106 Godden 2010 *TAXtalk* 24; The South African Labour Guide date unknown http://www.labourguide.co.za/general/499 pension-and-provident-funds.
107 Botha *et al The South African Financial Planning Handbook* 907.
108 Botha *et al The South African Financial Planning Handbook* 907.

The difference is that the members of provident funds, on resignation or retirement, are allowed to withdraw their entire provident fund benefit as a lump sum[109] and are not limited to taking only one third of the total benefit as a cash lump sum and buying an annuity with the remaining two thirds of the benefit.

2.5.1 The taxation on employer contributions (provident fund)

The employer's contributions to any provident fund are tax deductible for the employer.[110] Section 11(I) allows an **employer** who contributes to an employee's provident fund to claim a deduction of his contributions of up to 20% of the employee's retirement funding income against his taxable income.[111] This is not be seen as a fringe benefit that the employee enjoys and it is not taxed in the hands of the employee.[112]

2.5.2 The taxation on member contributions (provident fund)

Other than pension fund contributions, any contributions made by a member of a provident fund are paid from post-tax income and therefore the contributions are not tax deductible.[113]

2.5.3 Prior to retirement (provident fund)

Prior to retirement, the employee *may withdraw his total benefits,* which is payable as a cash lump sum.[114]

---

109 George 2006 *Analysis of the South African pension fund conversions: 1980-2006; Developing a model for dealing with environmental changes* 2.

110 S11 of the *Income Tax Act*; Godden 2010 *TAXtalk* 24.

111 Kokott *The evaluation of different retirement investment options as savings and tax planning tools* 32.

112 Par 2 of the 7th schedule to the *Income Tax Act*; Anon 2015 https://www.10x.co.za/publications/impact-of-the-retirement-reform-coming-into-effect-march-2016/.

113 Godden 2010 *TAXtalk 25.*

114 Botha *et al The South African Financial Planning Handbook* 940. The cash lump sum will be taxed after all available deductions had been deducted, as per table 1 above.

2.5.4 Retirement and death (provident fund)

Upon retirement, the employee may withdraw his total benefits that are payable as a cash lump sum[115] and after the relevant deductions had been deducted, the lump sum is taxed accordingly.[116]

Should the member pass away, his entire benefit can be taken as a lump sum.[117] The lump sum benefit would be deemed to have accrued to the deceased member[118] and after the relevant deductions had been deducted,[119] the remaining amount is included in his gross income[120] and taxed in accordance with Table 1 above.

The difference from the taxation of contributions of pension and provident funds prior to 1 March 2016, is that all employer contributions to pension and provident funds are not seen as a non-taxable fringe benefit. These contributions may be deducted, subject to limitations, as a business expense. Contributions made by employees to a pension fund are tax deductible, subject to limitations, for income tax purposes. Provident fund members are currently entitled to any deduction for income tax purposes on their contributions to the fund.

2.6 Taxation of benefits after 1 March 2016

The point of departure for this discussion is the *Taxation Laws Amendment Act* containing the new retirement fund rules that came into effect on 1 March 2016.[121]

115 Botha *et al The South African Financial Planning Handbook* 940.
116 The cash lump sum is taxed, after all available deductions had been deducted, as per Table 1 above.
117 Par 2(1)(a) of the 2nd Schedule to the *Income Tax Act* includes this lump sum benefit under par (e) of the definition of gross income.
118 Botha *et al The South African Financial Planning Handbook* 912.
119 Contained in Par 5 of the 2nd schedule to the *Income Tax Act*.
120 Stiglingh *et al Silke: South African Income Tax* 414.
121 National Treasury 2016 *Moneyweb* 6; Kamdar 2016 *Tax Professional* 17; Anon 2015 https://www.10x.co.za/publications/impact-of-the-retirement-reform-coming-into-effect-march-

With the new retirement fund rules government aims to simplify the tax treatment of *contributions to retirement funds*[122] by proposing that uniform tax rules apply to retirement contributions of pension and provident funds[123] and by creating tax incentives for members in an attempt to get them to save more.[124]

Over and above the tax incentives on *contributions to retirement funds*, National Treasury also introduced a tax-free investment benefit[125] in an attempt to encourage households to save even more.[126] An individual can contribute R30 000 per tax year[127] to a tax-free investment. A lifetime limit of R500 000, however, applies.[128] The funds can be invested in interest-bearing accounts, such as equities or money market accounts.[129] The major advantage for investors is the fact that all growth on the investment is exempt from tax on the interest, dividends, capital gains or withdrawals from the tax-free savings account.[130]

It is important to note with regard to the taxation rules of pension and provident fund, that they **are aligned**.[131] The new taxation rules of both funds are now analysed together.

2016/. There are, however, some retirement reform proposals that have been postponed until 2018 that are discussed below.

122 Pricewaterhouse 2016 *Tax Alert* 1; Department of National Treasury 2015 http://ww.treasury.gov.za/publications/RetirementReform.

123 Lamprecht 2016 *Tax Breaks Newsletters* 4; Department of National Treasury 2012 http://www.treasury.gov.za/publications/RetirementReform.

124 Rossouw 2016 *MoneyM* 21.

125 Van der Merwe 2015 *MoneyM* 14.

126 Hugo 2016 *MoneyM* 18; Anon 2015 *MoneyM* 24.

127 Hugo 2016 *MoneyM* 18; Van der Merwe *MoneyM* 14; Anon 2015 *MoneyM* 24; Department of National Treasury 2013 http://www.treasury.gov.za/documents/national.

128 Hugo 2016 *MoneyM* 18; Van der Merwe 2015 *MoneyM* 14; Department of National Treasury 2013 http://www.treasury.gov.za/documents/national%20budget/2013/2013%20Retirement%20Reforms.pdf.

129 Anon 2015 *MoneyM* 24.

130 Hugo 2016 *MoneyM* 18; Van der Merwe 2015 *MoneyM* 14; Department of National Treasury 2013 http://www.treasury.gov.za/documents/national.

131 National Treasury 2016 *Moneyweb* 6; Kamdar 2016 *Tax Professional* 17.

2.6.1 New taxation rules for pension and provident funds

As from 1 March 2016, the new taxation rules apply to pension and provident funds.[132] While pension fund members most likely would not feel the effect of retirement reform, provident fund members will be positively affected thereby.[133]

Government is aligning the taxation rules of pension and provident funds, which brings significant changes in the taxation of contributions to retirement funds and the withdrawal of benefits.

2.6.1.1 Taxation of employer contributions

After 1 March 2016,[134] ***employer contributions*** to pension or provident funds in respect of their employees are seen as a fringe benefit and it is taxed in the hands of the employee.[135]

All contributions made by employers are deemed as if the employees made such contributions.[136] The contributions that the employer made to the fund are included in the employee's contributions when calculating the employee's tax deduction.[137] The employee is able to claim a tax deduction on his personal contributions and on employer contributions[138] as per paragraph 2.4.3 hereof.

---

132 National Treasury 2016 *Moneyweb* 6; Kamdar 2016 *Tax Professional* 17; Botha *et al The South African Financial Planning Handbook* 884; Par 2.4.1 above.

133 Department of National Treasury 2015 http://ww.treasury.gov.za/publications/RetirementReform.

134 Kamdar 2016 *Tax Professional* 17.

135 Botha *et al The South African Financial Planning Handbook* 884. See the previous explanation as discussed in par 4.2.2 above.

136 Botha *et al The South African Financial Planning Handbook* 884.

137 Anon 2015 https://www.ensafrica.com/news/tax-treatment-of-contributions-to-retirement-funds.

138 Ward date unknown file:///C:/Users/Aletje/Downloads/Retirement%20Annuity%20reform%20July%202014%20(1)%20(5).pdf.

As before, employers who contribute to an employee's pension or provident fund is able to claim a deduction of his contributions up to 20% of the employee's taxable income.[139]

2.6.1.2 Taxation of member contributions (pension and provident fund)

After 1 March 2016,[140] **all member contributions** to **pension or provident funds** are subject to the same taxation rules.[141] Provident fund members, like pension fund members, are allowed a tax deduction for their contributions to the fund.[142] Not only do pension and provident fund members enjoy the same tax deductions,[143] but provident fund members also see an increase in their net salary.[144]

Employer contributions, which are seen as a fringe benefit of the employee, are deemed a contribution made by the employee.[145]

Contributions and deemed contributions to a pension or provident fund are deductible from a member's taxable income. The deduction is up to 27,5% of the higher of the member's taxable income.[146] The deduction that the employee can claim is limited to a maximum of R350 000 per year.[147] If a member contributed more than the maximum

139 Botha *et al The South African Financial Planning Handbook* 884.
140 National Treasury 2016 *Moneyweb* 6; Kamdar 2016 *Tax Professional* 17.
141 National Treasury 2016 *Moneyweb* 6.
142 Botha *et al The South African Financial Planning Handbook* 884; National Treasury 2016 *Moneyweb* 6; Department of National Treasury 2015 http://ww.treasury.gov.za/publications/RetirementReform.
143 National Treasury 2016 *Moneyweb* 6; Department of National Treasury 2015 http://ww.treasury.gov.za/publications/RetirementReform.
144 Kamdar 2016 *Tax Professional* 18; Department of National Treasury 2015 http://ww.treasury.gov.za/publications/RetirementReform; Anon *MoneyM* 5;
145 Pricewaterhouse 2016 *Tax Alert* 1; Kamdar 2016 *Tax Professional* 17; Anon *MoneyM* 5.
146 Botha *et al The South African Financial Planning Handbook* 884; Kamdar 2016 *Tax Professional* 17.
147 Botha *et al The South African Financial Planning Handbook* 884; Kamdar 2016 *Tax Professional* 17.

deduction per annum, he not only enjoys a tax deduction on such amount, but is also allowed to carry such amount over to the next year of assessment.[148]

2.6.1.3 Annuitisation of provident fund benefits

The retirement reform proposes that on date of retirement, a provident fund member will, as with pension funds, be allowed to take one third of his total benefit in the form of a cash lump sum and be compelled to purchase an annuity with two thirds of his benefits,[149] if the member's total benefit exceeds R247 500.[150] If the total benefit is less than R247 500, the member will be allowed to take the total benefit as a cash lump sum.[151]

It must be noted that the annuitisation of provident fund benefits has been postponed until 1 March 2018.[152]

In the event that a member is under the age of 55 years old on 1 March 2018, their vested rights in the fund (contributions and the growth thereon made to the fund prior to 1 March 2018) will not be affected.[153] This means that the member will be able to withdraw his vested rights in the fund on date of retirement.[154] Any contribution made to the fund after 1 March 2018 will be subject to the new annuitisation rules and the member will enjoy the new tax deductions.[155]

148 Lamprecht 2016 *Tax Breaks Newsletters* 4.
149 Kamdar 2016 *Tax Professional* 17; Rossouw 2016 *MoneyM* 21; Botha *et al The South African Financial Planning Handbook* 884.
150 Kamdar 2016 *Tax Professional* 18; Department of National Treasury 2015 http://www.treasury.gov.za/publications/RetirementReform/20151124%20Annexure%20B%20Impact%20of%20annuitisation.pdf.
151 Kamdar 2016 *Tax Professional* 17; Rossouw 2016 *MoneyM* 21; Pricewaterhouse *Tax Alert* 2.
152 Kamdar 2016 *Tax Professional* 18.
153 Acton 2016 *Moneyweb* 10; Pricewaterhouse 2016 *Tax Alert* 1.
154 Acton 2016 *Moneyweb* 10; Pricewaterhouse 2016 *Tax Alert* 1.
155 Clark 2013 *Moneyweb* 11; Kamdar 2016 *Tax Professional* 18.

All members who are 55 years old and older on 1 March 2018, will not be affected by the proposed legislation and will still be able to withdraw their full benefit as a cash lump sum, unless they transfer their benefits to another fund of which they become a member after 1 March 2018.[156] These members will not only enjoy the benefits of the new tax deductions,[157] but will even be allowed to withdraw contributions made after 1 March 2018 as a cash lump sum.[158]

It must be noted the above proposed amendment has been delayed due to pushbacks from various unions[159] and constitutionality concerns relating to the requirement that provident fund members must buy an annuity.[160]

Therefore, by comparing the taxation of pension and provident fund contributions and benefits before and after the implementation of the *Taxation Laws Amendment Act*, it is evident that the said Act will certainly have a positive effect on South African's retirement planning.

It is therefore evident that fund governance should also be considered.

---

156 Acton 2016 *Moneyweb* 10; Kamdar 2016 *Tax Professional* 18; Pricewaterhouse 2016 *Tax Alert* 1.
157 Clark 2013 *Moneyweb* 11.
158 Kamdar 2016 *Tax Professional* 18; Department of National Treasury 2015 http://www.treasury.gov.za/publications/RetirementReform.
159 Lamprecht 2016 *Personal Finance Newsletter* 16.
160 Kamdar 2016 *Tax Professional* 18; National Treasury 2016 *Moneyweb* 6.

3 Fund governance issues affecting the effectiveness of retirement initiatives

3.1 Introduction

Although National Treasury is working hard to empower people to save more for retirement by means of tax incentives, tax-free investments, law amendments and creating awareness of the importance of saving for retirement, **fund governance issues** are a main concern, especially, the impact they have on the effectiveness of retirement initiatives.

All complaints relating to pension and provident funds are referred to the Funds Adjudicator. The *Pension Funds Act* reads as follows:

> 1) Notwithstanding the rules of any fund, a complainant may lodge a written complaint with a fund for consideration by the board of the fund.
>
> 2) A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof.
>
> 3) If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator.
>
> 4) Subject to section 301, the Adjudicator may on good cause shown by any affected party-
>
>   a) extend a period specified in subsection (2) or (3) before or after expiry of that period; or
>
>   b) condone non-compliance with any time limit specified in subsection (2) or (3).[161]

161 S30A of the *Pension Funds Act*.

The majority of complaints received by the Funds Adjudicator entail that members were unhappy about the ultimate benefit that they received from their pension or provident fund.[162] Members complained that the funds they received are much less than what was promised by their broker[163] or product provider.[164]

The reason for these types of complaints may be poor communication between the trustees of the funds and their members.[165] In light of these complaints, one can perhaps conclude that members are not well informed regarding their benefits, contributions and the impact of death, disability, withdrawal of funds early or early retirement. This was evident in *Slamat v The Private Security Sector Provident Fund and another* 2013 2 BPLR 273 (PFA),[166] which was heard before the Funds Adjudicator during 2012. This case is a clear indication of member's struggles to get information from their funds. In the *Slamat*-case, the fund member (complainant) was a member of a provident fund (respondent). The member complained to the Funds Adjudicator about the fund not providing him with a benefit statement, which complaint was received on 10 September 2009.[167] On 18 September 2009 the Funds Adjudicator send

162 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/.

163 S1 of the *Financial Advisory and Intermediary Services Act* 37 of 2002 (hereinafter referred to as *FAIS*) defines a financial services provider as any person, other than a representative, who as a regular feature of the business of such person furnishes advice or furnishes advice and renders any intermediary service or renders an intermediary service. S1 of *FAIS* also defines a representative as any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service does not require judgment on the part of the latter person or does not lead a client to any specific transaction in respect of a financial product in response to general enquiries. A broker is usually a representative of a financial services provider.

164 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/.

165 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/. S1 of FAIS defines a product provider as any person who issues a financial product.

166 *Slamat v Private Security Sector Provident Fund and another* 2013 BPLR 273 (PFA) (hereinafter referred to as the *Slamat*-case).

167 Parr 1.1-1.2 of the *Slamat*-case.

a letter to the fund, informing them about the complaint and stipulating that the fund must respond on or before 28 October 2009.[168]

The fund was afforded the opportunity to comment on the complaint[169] as prescribed in the *Pension Funds Act*, which stipulates that:

> When the Adjudicator intends to conduct an investigation into a complaint he or she shall afford the fund or person against whom the allegations contained in the complaint are made, the opportunity to comment on the allegations.[170]

The fund did not respond and the Funds Adjudicator had to make a decision based on the facts before them.[171] The issue that had to be decided was whether or not the fund failed to provide the member with a benefit statement.

The Funds Adjudicator turned to the duties of trustees of a provident fund, as contained in the *Pension Funds Act*.[172] The *Pension Funds Act* contains the following specific duty of trustees:

> …ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure requirements as may be prescribed.[173]

The Funds Adjudicator held that funds communicates to its members by regularly providing them with benefit statements, giving the members information regarding their benefits, contributions and other information.[174] The Funds Adjudicator made the following comment regarding benefit statements:

168 Par 1.2 of the *Slamat*-case.
169 Par 4.1 of the *Slamat*-case.
170 S30F of the *Pension Funds Act*.
171 Par 1.2 of the *Slamat*-case.
172 S7 of the *Pension Funds Act*.
173 S7D(c) of the *Pension Funds Act*.
174 Par 5.3 of the *Slamat*-case.

> … a benefit statement plays a very important role in the sense that it gives members vital information regarding their benefits in the event of death, withdrawal, disability, retirement and other relevant information relating to the fund's assets.[175]

The Funds Adjudicator held that when funds provide benefit statements to its members on a regular basis, the fund is complying with its fiduciary duty as set out in section 7D(c) of the *Pension Funds Act*.

Ultimately, the Funds Adjudicator found that the fund did fail to provide the member with a benefit statement[176] and made an order compelling the fund to provide the member with a benefit statement within seven days.[177]

This was also the case in *Linkie Tshwarano Mantsho v Managing Director of the Municipal Employees Pension Fund (MEPF)*[178] where the complainant was not provided with benefit statements for years.[179] After not receiving benefit statements since 2005, the complainant lodged a complaint with the Funds Adjudicator during December 2013[180] and requested the Funds Adjudicator to compel the fund to provide her with benefit statements.[181]

After the Funds Adjudicator considered the complaint, the fund was ordered by the Funds Adjudicator to provide the benefit statements to the complainant,[182] but still failed to do so.[183]

175 Par 5.3 of the *Slamat*-case.
176 Par 5.6 of the *Slamat*-case.
177 Par 6.1.1 of the *Slamat*-case.
178 *Linkie Tshwarano Mantsho v Managing Director of the Municipal Employees Pension Fund* (MEPF) (case number 37226/2014) (hereinafter referred to as the *Linkie*-case).
179 Par 2 of the *Linkie*-case; Lukhaimane 2015 http://www.fanews.co.za/article/compliance-regulatory/2/Pension Funds Act-pension-fund-adjudicator/1026/judge-rules-Pension Funds Act-s-determinations-enforceable-as-a-judgement/18743.
180 Par 2 of the *Linkie*-case.
181 Par 3 of the *Linkie*-case.
182 Par 5 of the *Linkie*-case.
183 Lukhaimane 2015 http://www.fanews.co.za/article/compliance-regulatory/2/Pension Funds Act-pension-fund-adjudicator/1026/judge-rules-Pension Funds Act-s-determinations-enforceable-as-a-judgement/18743.

The complainant then approached the High Court of South Africa for an order holding the fund in contempt of a determination made by the Funds Adjudicator.[184] The complainant contended that the fund had disobeyed the Funds Adjudicator's determination and that since the determination is "deemed to be a civil judgment by any court of law" as contained in section 30(O)(1) of the *Pension Funds Act,* the fund is in contempt of the court.[185]

The high court had to establish whether the Funds Adjudicator was in contempt of court.[186] In order to do so, the high court had to determine whether the Funds Adjudicator can be given the status of a court.[187]

The high court held that the Funds Adjudicator is established in terms of the provisions of the *Pension Funds Act*,[188] it may follow any procedure which it considers appropriate when investigating a complaint and no party is entitled to be legally represented.[189] Therefore, the high court found that the Funds Adjudicator is not a public judicial officer and his determinations is not an order of the court and therefore cannot be in contempt of court.[190]

3.2 Fund governance

One of the main concerns is that members do not know that in terms of the fund rules, fund contributions are calculated as a percentage of their pensionable salary instead of their total earnings.[191]

---

184 Par 1 of the *Linkie*-case.
185 Par 6 of the *Linkie*-case.
186 Par 10 of the *Linkie*-case.
187 Par 10 of the *Linkie*-case.
188 Par 14 of the *Linkie*-case.
189 Par 16 of the *Linkie*-case.
190 Par 26 of the *Linkie*-case.
191 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/.

This is a very important definition as the term "pensionable salary" is usually contained in most employee's contracts. Unfortunately, this goes completely unnoticed.[192] Pensionable salary is defined by each fund's rules.[193] The definition of pensionable salary may or may not take into account variable items such as commission, bonuses or overtime.[194] For example, if a specific fund defines pensionable salary as a member's basic salary and that specific employee earns overtime as well, it is crucial that the member knows that the overtime will not be included in the calculation of his pensionable salary.[195]

The problem relating to pensionable salary can also be explained using another example. A member chooses to save 20% of his salary of R100 000 per month (R20 000). Without realizing, a pensionable salary clause is included in his contract stating that his employer has pensionable income set at 75% of the employer's salary. This means that the employee will only save 20% of R75 000 (R15 000), meaning that the employee will save R5 000 less than what he had in mind. Without realizing, member's contributions are much lower than what they may have expected.[196]

If members received their benefit statements and other relevant information on a regular basis, they may have noticed this, since the annual benefit statement must reflect the member's pensionable salary,[197] and made provision for bigger contributions. One must also bear in mind that some employees do not understand these complex calculations.

---

192 Cabot-Alletzhauser 2014 http://benefitsbarometer.co.za/2014/06/26/unintended-consequenses-pensionable-pay/.

193 Mainwood 2013 https://www.barnett-waddingham.co.uk/comment-insight/briefings/2013/12/10/pensionable-salary-vs-final-pensionable-salary-vs-/.

194 Mainwood 2013 https://www.barnett-waddingham.co.uk/comment-insight/briefings/2013/12/10/pensionable-salary-vs-final-pensionable-salary-vs-/.

195 Mainwood 2013 https://www.barnett-waddingham.co.uk/comment-insight/briefings/2013/12/10/pensionable-salary-vs-final-pensionable-salary-vs-/.

196 Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/.

197 Anon date unknown http://www.totrust.co.za/200602_libertylife.htm.

Because some funds do not provide their members with benefit statements, members cannot do proper retirement planning.[198]

3.3 Communication between funds and its members

Pension and provident funds management mainly communicate to their member's through benefit statements, giving the members information regarding their benefits, contributions and other information.[199] The frequency of funds providing benefit statements to their member's is usually contained in the fund rules.[200] While some retirement funds experience delays in the issuing of benefit statements,[201] some members do not receive their benefit statements at all.[202] The most common reason for this is that funds send the member's benefit statements to the intermediary,[203] who then fails to distribute these statements to the members.[204]

One of the missions of the Financial Services Board (herein after referred to as the FSB) is to promote a safe and stable environment for members of Retirement Funds. In an attempt to accomplish their mission, the FSB issues information circulars

---

198 National Treasury cannot expect South Africans to provide sufficiently for their old age if they are not properly educated and informed about their benefits. The only way to ensure both is by constantly providing members with the correct benefit statements that reflect the accumulated benefits in a simple and concise manner.

199 Par 5.3 of the *Slamat*-case.

200 Par 5.4 of the *Slamat*-case. In the par 5.4 of the *Slamat*-case, the adjudicator held that if there is no clear provision in the fund's rules regarding the frequency of providing benefit statements to its members, the provisions of the Pension Funds Circular 86 read together with the provisions of the Pension Funds Circular 90 are instructive.

201 Financial Services Board 2013 https://www.fsb.co.za/Departments/retirementFund/Documents/Registrar.

202 In the case of *Rodseth v Dynamique SA Umbrella Provident Fund and another* 2015 2 BPLR 263 (PA) the member of the fund never received a benefit statement because the fund sent the benefit statement to the intermediary, who failed to provide the member with same. The adjudicator held that "by forwarding benefit statements to the intermediary for onward transmission to the members, the board has abandoned its duty to ensure that adequate information is communicated to members".

203 A financial intermediary is an organization or individual that acts as middleman between parties in a financial transaction.

204 *Rodseth v Dynamique SA Umbrella Provident Fund and another* 2015 2 BPLR 263 (PA).

pertaining to disclosure and communication between funds and its members on a regular basis.[205]

More complaints about the lack of communication between funds and its members led the FSB to issue the Pension Funds Circular 130[206] during 2007. It mainly contained what good governance for retirement funds should entail.[207] It stipulated that:

> A communication Policy should be established for the disclosure of fund information to members and beneficiaries. Cognisance should be taken of the Registrar's prescribed minimum disclosure requirements to members and beneficiaries. Other information may relate to the fund's investment policy statement, cash flow, the fund membership details, and any other information which the board considers appropriate, relevant or useful in order to carry out its functions. Such communication should be appropriate, timely, accurate, complete, consistent, cost-effective, useful, comprehensible and accessible. Communication to members and beneficiaries should include information in respect of the operations, administration and investments of the fund.[208]

However, these circulars are codes of good practice which the FSB and the financial services industry's representatives agreed upon,[209] **but are not law**, **have no binding effect**[210] and is **not enforceable**.[211] This was confirmed by the Registrar of Pension Funds in the case of *Chairman of the Sanlam Pensioenfonds v Registrar of*

205 In the Pension Fund Circular 86, the FSB directs that an annual benefit statement must be furnished to each member (excluding pensioners and deferred pensioners) not later than six months after the financial year end of that fund and Pension Fund Circular 90 contains information that must be communicated and/or disclosed to fund members; Anon date unknown http://www.totrust.co.za/200602_libertylife.htm.

206 It is stipulated in the Pension Funds Circular 130 that the circular is applicable to all funds (including pension funds), approved administrators, insurers who underwrites pension funds.

207 Sigwadi 2008 *SA Merc LJ* 343; Passmoor 2016 *Without Prejudice* 30; Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation.

208 Par 59 of the Pension Funds Circular 130.

209 Anon date unknown http://www.totrust.co.za/200602_libertylife.htm.

210 Mhango *Can inaccurate benefit statements lead to pension fund liability under the South African Pensions Funds Act?* 450; Passmoor 2016 *Without Prejudice* 30.

211 Passmoor 2016 *Without Prejudice* 30; Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation%20portability%20and%20governance%20%2021%20Sept%202012%20.pdf.

Pension Funds.[212] In the aforementioned case, the applicant sought a declaratory order to the effect that section 15B(5)(a) and 15B(6) of the *Pension Funds Act* did not have retrospective effect prior to 7 December 2001.[213] The respondents opposed the application based on several grounds that are not relevant to this study.

During April 2003, the respondent issued Pension Fund Circular 113 which provided that when the trustees of a retirement fund applies section 15B(6) of the *Pension Funds Act*, it may ignore events that occurred prior to 1 January 1980.[214] The important allegation that the respondent, who is the Registrar of Pension Funds, made in this regard is:

> …that the circular is no more than a guideline for a board and that a board is not bound thereby and that it has a discretion to either apply to it or to ignore it.[215]

Ultimately, a pension fund's board of trustees may decide to adhere to the circulars or not.[216]

Section 7 of the *Pension Funds Act,* however, contains the duties of the trustees of retirement funds and all funds must be adhere to it. The *Pension Funds Act* contains the following specific duty of trustees:

> …ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure requirements as may be prescribed.[217]

---

212 *Chairman of the Sanlam Pensioenfonds v Registrar of Pension Funds 2007* (3) SA 41 T (herein after referred to as the *Sanlam Pensioenfonds*-case); Passmoor 2016 *Without Prejudice* 30.
213 Par 1 of the *Sanlam Pensioen*-case.
214 Par 9 of the *Sanlam Pensioen*-case.
215 Par 9 of the *Sanlam Pensioen*-case.
216 Mhango *Can inaccurate benefit statements lead to pension fund liability under the South African Pensions Funds Act?* 450.
217 S7D(c) of the *Pension Funds Act*.

Section 7 of the *Pension Funds Act* places a further duty on trustees of retirement funds, stipulating that:

> …in pursuing its object the board shall- take all reasonable steps to ensure that the interest of members in terms of the rules of the fund and the provisions of this Act are protected at all times,…[218]

It was confirmed in the *Slamat*-case that section 7C(2)(a) of the *Pension Funds Act* places a duty on the trustees to act in the best interest of the members, especially when it comes to their benefits.[219] This does not require or obligate a fund to go to extreme measures to ensure that member's wishes or needs are fulfilled.[220] It simply requires funds to take all reasonable steps to ensure that the interests of members are not prejudice, but protected at all times.[221]

In the case of *Johannesburg Municipality Pension Fund v NCB Employee Benefits (Pty) Ltd*[222] the court confirmed that the duties of trustees of retirement funds are contained in section 7D of the *Pension Funds Act*, which holds that:

> …what is plain from the provisions of the Act… is that the committee of the fund… occupies a position of trust. It has a fiduciary duty towards the members of the fund on whose behalf the assets of the pension funds are administered.[223]

It is therefore clear that the trustees of all retirement funds owes a fiduciary duty to each and every member of that fund when the trustees of retirement funds direct, control and oversee the operations of the fund. The trustees of retirement funds are required to do everything necessary for its proper functioning.

---

218 S7C(2)(a) of the *Pension Funds Act*.
219 Par 5.5 of the *Slamat*-case.
220 Marumoagae 2012 *PELJ* 556.
221 S7C(2)(a) of the *Pension Funds Act*; Marumoagae 2012 *PELJ* 556.
222 *Johannesburg Municipality Pension Fund v NCB Employee Benefits (Pty) Ltd* (unreported) case number 74/01 of 11 April 2001. (Hereinafter referred to as the *Johannesburg Municipality Pension Fund*-case).
223 Par 24 of the *Johannesburg Municipality Pension Fund*-case.

In terms of the *Pension Funds Act,*[224] information that should be communicated to the members includes among other things, their benefit statements.[225] One of the main concerns is that there is no specific time frame to demand that information is provided to members.

In the *Slamat*-case it was held that:

> When funds provide members with their benefit statements, the fund will be complying with its fiduciary duties contained in section 7C(2) of the *Pensions Funds Act* to its members.[226]

In the case of *Wentworth v GG Umbrella Provident Fund*[227] the complainant[228] was employed by the third respondent[229] and a member of the first respondent,[230] who was a provident fund. The member had numerous complaints regarding maladministration of the fund. However, the complaint most applicable to this study was found to be the complaint regarding failure to provide the fund member with information regarding his benefits. During May 2007,[231] the member complained to the Funds Adjudicator stating that despite numerous requests to the fund to provide him with a benefit statement, the fund failed to do so.[232] The last benefit statement that the member had received was during November 2004.[233]

---

224 S7D(c) of the *Pension Funds Act*.
225 Mhango *Can inaccurate benefit statements lead to pension fund liability under the South African Pensions Funds Act?* 450.
226 Par 5.5 of the *Slamat*-case.
227 *Wentworth v GG Umbrella Provident Fund & Others 2009* 1 BPLR 87 (herein after referred to as the *Wentworth*-case).
228 Hereinafter referred to as the member.
229 Hereinafter referred to as the employer.
230 Hereinafter referred to as the fund.
231 Par 7 of the *Wentworth*-case.
232 Par 7 of the *Wentworth*-case.
233 Par 31 of the *Wentworth*-case.

After the Funds Adjudicator investigated the matter, the adjudicator had to determine whether there was a maladministration of the fund by the trustees of the fund regarding the failure to provide the member with benefit statements.[234]

The adjudicator referred to the case of *Lediga v Bosal Afrika Group Provident Fund,*[235] where it was held that the failure of a fund to provide relevant information required by the fund member for the exercise of his or her rights constitutes a breach of the duty to act in good faith and amounts to maladministration of the fund. It was therefore clear to the adjudicator that funds should provide its members with relevant information regarding their rights, duties and benefits in order for such members to make informed decisions and protect their interests.[236] The member's entitlement to be provided with a benefit statement containing the adequate information, is based on the duties of trustees of retirement funds. The *Pension Funds Act* provides that the duties of the trustees of retirement funds include:

> Ensur[ing] that adequate and appropriate information is communicated to the members of the fund by informing them of their rights, benefits and duties in terms of the rules of the fund.[237]

The adjudicator then turned to the question of how often retirement funds should provide their members with benefit statements. It was held that in most cases, retirement funds determine in their rules that members will be provided with a benefit statement annually.[238] The adjudicator held further that in the event of such provisions being absent or unclear, the provisions of Pension Funds Circular 86 and Pension Funds Circular 90 are important.[239]

---

234 Par 15 of the *Wentworth*-case.
235 *Lediga v Bosal Afrika Group Provident Fund* 2001 7 BPLR 2211 (PFA).
236 Par 17 of the *Wentworth*-case.
237 S7D(c) of the *Pension Funds Act*.
238 Par 21 of the *Wentworth*-case.
239 While the Pension Funds Circular 86 requires that an annual benefit statement should be furnished to members within six months after the financial year end of that fund, Pension Funds Circular 90 contains the minimum information that should be included in a benefit statement.

The member was last furnished with a benefit statement during November 2004. Only after the passing of some time, the member realized that the employer had not paid over contributions to the fund.[240] The adjudicator held that due to the funds failure to provide the member with his benefit statements, the member had suffered an adverse effect on his retirement benefit, and that the fund's conduct was contrary to their fiduciary duty to act in good faith and in the best interest of the member.[241]

The fund's rules regarding the frequency of providing benefit statements was not clear,[242] and the adjudicator proceeded to refer to the Pension Funds Circular 86 which states that a fund should provide its members with benefit statements within six months after the fund's financial year-end. The adjudicator held that:

> …access to benefit statements annually is not enough, and it is, therefore, reasonable that members should be provided with benefit statements every six months so that they can keep abreast with their benefits and returns earned thereon.[243]

Despite the *Wentworth*-case, retirement funds that do provide their members with benefit statements, only provides them **annually**. In most instances, benefit statements are forwarded to members' intermediaries and not to the members themselves. The intermediaries then fail to distribute these benefit statements to the members. [244] The trustees of retirement funds are allowed to delegate some of their duties. In this regard, the *Pension Funds Act* reads as follows:

> 1) The board may, in writing and in accordance with a system of delegation set out in the rules, delegate any of its functions under this Act to a person or group of persons, or a committee of the board, subject to conditions that the board must determine.

240 Par 32 of the *Wentworth*-case.
241 Par 32 of the *Wentworth*-case.
242 Par 32 of the *Wentworth*-case.
243 Par 33 of the *Wentworth*-case.
244 *Rodseth v Dynamique SA Umbrella Provident Fund and another* 2015 2 BPLR 263 (PA).

2) The board is not divested or relieved of a function delegated under paragraph (a) and may withdraw the delegation at any time.[245]

It must be stressed that the trustees of retirement funds **are not** divested or relieved of a function delegated.[246]

Section 2 of the *Financial Institutions (Protection of Funds) Act*[247] is also applicable to the trustees of retirement funds.[248] Aforementioned section of the *Financial Institutions Act* reads as follows:

> A director, member, partner, official, employer or agent of a financial institution or of a nominee company who invest, holds keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property-
>
> 1) must, with regard to such funds, observe the utmost good faith and exercise proper care and diligence;
>
> 2) must, with regard to the trust property and the terms of the instrument or agreement by which the trust or agency in question has been created, observe the utmost good faith and exercise the care and diligence required of a trustee in the exercise or discharge of his or her powers and duties; and
>
> 3) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the funds or trust property or furnish any guarantee in a manner calculated to gain directly or indirectly any improper advantage for himself or herself or for any other person to the prejudice of the financial institution or principal concerned.[249]

Strangely, the *Pensions Funds Act* does not provide for any criminal sanctions against trustees who do not comply with their fiduciary duties as set out in section 7C and section 7D of the *Pensions Funds Act*.[250] However, the *Financial Institutions Act*[251] provides that if an individual fails to comply with section two of the said Act, such

245 S7D(2)(a) and (b) of the *Pension Funds Act*.
246 S7D(2)(b) of the *Pension Funds Act*; Par 14 of the Pension Funds Circular 130.
247 *Financial Institutions (Protection of Funds) Act* 28 of 2001 (hereinafter referred to as the *Financial Institutions Act*).
248 Passmoor 2016 *Without Prejudice* 30; Par 13 *Sanlam Pensioenfonds*-case.
249 S2 of the *Financial Institutions Act*.
250 Passmoor 2016 *Without Prejudice* 31.
251 S10 of the *Financial Institutions Act*.

individual will/can be found guilty of an office and could be liable to a fine not exceeding R10 000 000 or imprisonment of ten years.[252]

In a determination of the Funds Adjudicator, it held that a board of trustees only comply with their fiduciary duties in terms of section 7D(c) of the *Pension Funds Act* if the benefit statements are forwarded to the members directly.[253] It is therefore clear that the trustees of retirement funds remain the responsible and accountable body who must ensure that adequate and appropriate information is communicated to the members of the fund by informing them of their rights, benefits and duties in terms of the rules of the fund. The trustees of retirement funds who do not comply with their fiduciary duties can be held personally liable by fund members in terms of section two of the *Financial Institutions Act*.[254]

3.4 Remedies available to fund members

The board of trustees of retirement funds might decide to adhere to the released circulars or not.[255] This means that retirement funds may choose to send out benefit statements annually.

The only way that a member of a fund can force their retirement funds to provide them with their benefit statements is to lodge a formal complaint with the Funds Adjudicator[256] in terms of the *Pension Funds Act*. The *Pension Funds Act* reads as follows:

---

252 Passmoor 2016 *Without Prejudice* 31.

253 *Rodseth v Dynamique SA Umbrella Provident Fund and another* 2015 2 BPLR 263 (PA). The adjudicator held that "by forwarding benefit statements to the intermediary for onward transmission to the members, the board has abandoned its duty to ensure that adequate information is communicated to members".

254 Sigwadi 2008 *SA Merc LJ* 338.

255 Mhango *Can inaccurate benefit statements lead to pension fund liability under the South African Pensions Funds Act?* 450.

256 Botha *et al The South African Financial Planning Handbook* 933.

1) Notwithstanding the rules of any fund, a complainant may lodge a written complaint with a fund for consideration by the board of the fund.

2) A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof.

3) If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the Adjudicator.

4) Subject to section 301, the Adjudicator may on good cause shown by any affected party-

   a) extend a period specified in subsection (2) or (3) before or after expiry of that period; or

   b) condone non-compliance with any time limit specified in subsection (2) or (3).[257]

The main objective of the Funds Adjudicator is to dispose of complaints lodged in terms of section 30A(3) of the *Pension Funds Act* in a fair, economical and expeditious manner.[258] In order to achieve this main objective, the *Pension Funds Act* stipulates that:

1) In order to achieve his or her main object, the Adjudicator-

   a) shall, subject to paragraph (b), investigate any complaint and may make the order which any court of law may make;

   b) may, if it is expedient and prior to investigating a complaint, require any complainant first to approach an organization established for the purpose of resolving disputes in the pension funds industry or part thereof, and approved by the registrar

2) Any complaint dealt with in terms of subsection (1)(b) shall be recorded by the Adjudicator and shall, for purposes of section 30H(3), be deemed to be a receipt of a complaint.

257 S30A of the *Pension Funds Act*.
258 S30D of the *Pension Funds Act*.

3) If the complaint, dealt with in terms of subsection (1)(b), is not resolved, the complainant may again lodge the complaint with the Adjudicator, who shall deal with it in terms of subsection (1)(a).[259]

In practice, members of funds follow the complaint procedure as stipulated by the *Pension Funds Act*. Usually the outcome of the procedure is that the Funds Adjudicator makes an order compelling the fund to provide the member with a benefit statement within seven days.[260]

One wonders how it is possible that funds simply get a slap on the wrist from the Funds Adjudicator if they do not provide their members with benefit statements, especially considering the provisions of the *Pension Funds Act*.

Members of retirement funds who have suffered a loss because trustees of retirement funds did not comply with their fiduciary duties may bring a damages claim against the trustees of the retirement fund[261], either collectively or individually.[262] This is a costly and timeously route that most members of retirement funds cannot afford.

Strangely, the *Pensions Funds Act* does not provide for any criminal sanctions against trustees who do not comply with their fiduciary duties as set out in section 7C and section 7D of the *Pensions Funds Act*.[263]

As indicated in Chapter 2, the *Taxation Laws Amendment Act* has a positive effect on an individual's retirement planning since the tax alignment, tax incentives and tax-free investments motivate members to save more. However, if National Treasury fails to address the problem of poor communication between funds and its members, the implementation of the *Taxation Laws Amendment Act* could be all but worthless.

---

259 S30E of the *Pension Funds Act*.
260 Par 1.6 of the *Slamat*-case.
261 Sigwadi 2008 *SA Merc LJ* 339.
262 Par 7 of the Pension Fund Circular 130.
263 Passmoor 2016 *Without Prejudice* 31.

Knowing what you have increases the value of what you have. The above case law clearly shows that if retirement fund members are properly informed about the value of their benefits and how contributions to their retirement funds or lump sums are taxed, they are informed about what their benefits at any given stage are and what they still need to save to retire independently. Members will be in a position to do proper retirement planning, a right to which all hard working South Africans are surely entitled.

4 Recommendations

With the process of retirement reform, National Treasury aims to firstly improve standards of **fund governance** and secondly the **protection of member's interests**. This is evident from a document published by National Treasury where they explained what retirement reform is by stating that retirement reform is a process where government through policies aim to:

> Ensure that employees receive good value for money for their retirement savings and are treated fairly, and that their savings are prudently and diligently managed, and are kept informed of their retirement savings.
>
> Improve standards of retirement fund governance, including trustee knowledge and conduct, and the protection of members' interest. [264]

With reference to the trustees of retirement funds protecting member's interests, the *Pension Funds Act* stipulates that:

> …in pursuing its object the board shall- take all reasonable steps to ensure that the interest of members in terms of the rules of the fund and the provisions of this Act are protected at all times,…[265]

The above section in the *Pension Funds Act* places a duty on the trustees to act in the best interest of the members, especially when it comes to their benefits. To ensure that trustees of retirement funds act in good faith towards their members, the *Pension Funds Act* further stipulates that the trustees must:

> Ensure that adequate and appropriate information is communicated to the members of the fund by informing them of their rights, benefits and duties in terms of the rules of the fund.[266]

264 Department of National Treasury Date unknown http://www.gepf.gov.za/uploads/newsletters/FAQ.
265 S7C(2)(a) of the *Pension Funds Act*.
266 S7D(c) of the *Pension Funds Act*.

Unfortunately, there are no strategies in place for achieving this. These two aspects are of vital importance and should be addressed to ensure that government's retirement savings initiative is successful.

Fund governance refers to the process that the trustees of retirement funds follow in an attempt to accomplish their objective, which is to direct, control and oversee the operations of a fund in accordance with the applicable laws and the rules of the fund.[267] The purpose of good fund governance is to ensure that:

1) the benefits provided for in terms of the rules of the fund are actually delivered;
2) the benefits are optimized and the associated investment risks are minimized, with these opposing concepts being appropriately balanced against each other;
3) the process involved in the provision of the benefits and the administration of the fund warrants that the cost implications to members and beneficiaries, is transparent and quantifiable by the stakeholders.[268]

In 2007, Pension Funds Circular 130 was issued by the FSB. It mainly stipulated what good governance for retirement funds should entail.[269] It stipulated that:

> A communication Policy should be established for the disclosure of fund information to members and beneficiaries. Cognisance should be taken of the Registrar's prescribed minimum disclosure requirements to members and beneficiaries. Other information may relate to the fund's investment policy statement, cash flow, the fund membership details, and any other information which the board considers appropriate, relevant or useful in order to carry out its functions. Such communication should be appropriate, timely, accurate, complete, consistent, cost-effective, useful, comprehensible and accessible. Communication to members and beneficiaries should include information in respect of the operations, administration and investments of the fund.[270]

---

267 S7C of the *Pension Funds Act*.
268 Par 4 of the Pension Funds Circular 130.
269 Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation%20portability%20and%20governance%20%2021%20Sept%202012%20.pdf.
270 Par 59 of the Pension Funds Circular 130.

This means that trustees of retirement funds should put in place a communication strategy with their members.[271] But, unfortunately, funds do not comply with these stipulations because it is not law and not enforceable.[272] With the lack of a sanction for non-compliance, it has become very easy for funds and boards of trustees to disregard these circulars blatantly.

In 2013 the National Treasury proposed that the Pension Fund Circular 130 be revised and made a directive.[273] This would mean that Pension Fund Circular 130 would be enforceable by the Registrar of Pension Funds.[274] It has, however, not yet been made a directive and remains unenforceable.[275] This unfortunately leaves members of retirement funds in the exact same position, still in some instances receiving not their benefit statements, which in the long run will affect their retirement planning.

The following recommendations could be made to National Treasury in an attempt to ensure that the effect of the *Taxation Laws Amendment Act* on retirement planning is positive. It is recommended that:

1) The Pension Funds Circular 130 be amended to include provisions regarding better awareness of members' rights, duties and benefits; education policies on savings; market research that retirement funds must do; non-compliance by retirement funds and the powers of the Funds Adjudicator. Members should be better aware of exactly what their rights, duties and benefits are. The said circular should specify what each member's rights

271 Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation.
272 Passmoor 2016 *Without Prejudice* 30; Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation.
273 Department of National Treasury 2013 http://www.treasury.gov.za/documents/national.
274 Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation.
275 Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation.

are, how it can be enforced and what remedies are available to the member. The circular should set out the minimum requirements relating to member awareness and information on what a benefit statement should entail.

2) That provisions be included in the Pension Funds Circular 130 on how retirement funds can educate its members on the importance of retirement savings and the interpretation of benefit statements. Minimum requirements in this regard must be set out clearly in the said circular.

3) That provisions be included in the Pension Funds Circular 130 that specifically requires retirement funds to do proper market research regarding fund member's needs and priorities, and setting out guidelines on the frequency of market research, how market research should be conducted and interpreted. The Pension Funds Circular 130 must stipulate that if market research indicates a gap in the fund's rules and/or code of conduct, the fund must amend their rules and/or code of conduct within a reasonable time.

4) That provisions be included in the Pension Funds Circular 130 that deals specifically with the consequences of funds not complying with the provisions of the circular. This may include that retirement funds may be held liable to pay a fine or that a cost order may be granted against the fund.

5) That provisions be included in the Pension Funds Circular 130 that deals specifically with the Registrar of Pension Fund's powers in the event that retirement funds do not comply with the provisions of the said circular. It is recommended that the Registrar of Pension Funds be granted the power to not only compel a retirement fund to issue the benefit statement to the member within a prescribed period of time, but also to issue a substantial

fine to the fund and to make a relevant cost order for failure to comply with the provisions of Pension Fund Circular 130.

6) Trustees of retirement funds must inform all of their fund members of section 10 of the Financial Institutions Act, which contains the penalty for trustees who do not adhere to their fiduciary duties.

The final suggestion is that the circular must be made a directive as soon as possible. This would mean that Pension Fund Circular 130 would be enforceable by the Registrar of Pension Funds.[276]

As from the date on which the said circular has been made a directive, all retirement funds must be granted ninety days to amend their fund rule and/or code of conduct. After ninety days have expired, all provisions of the said directive would become strictly enforceable by the Registrar of Pension Funds.

---

276 Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation.

5 Conclusion

It is clear from the line of argument that the alignment of tax treatment of pension and provident funds, tax incentives to employers and employees and tax-free investments are for the better and will motivate South Africans to save more for their retirement. This will eventually lead to less vulnerable households.

By comparing the tax treatment of pension and provident funds before and after the *Taxation Laws Amendment Act*, the positive effect of the Act on retirement planning was clearly visible.

However, the main question was whether the alignment of tax treatment of pension and provident funds, tax incentives to employers and employees and tax-free investments alone are sufficient measures to increase the percentage of fund member who can maintain the same standard of living after retirement.

The focal point was the fund governance issues that members of retirement funds experience, namely lack in communication between themselves and the funds. Chapter 3 confirmed that trustees of retirement funds will only comply with their fiduciary duties as set out in section 7 of the *Pension Funds Act* if they protect the member's interests and ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund. Even though the FSB have issued several Pension Fund Circulars relating to communication requirements, these circulars unfortunately are not law and have no legal effect.

In the event that a retirement fund does not provide its members with benefit statements, the only real remedy available to members is to lodge a formal complaint with the Funds Adjudicator. A discussion of various Funds Adjudicator decisions revealed that funds only get a slap on the wrist when failing to provide benefit statements to its members. This is unacceptable.

Following the above, the focus shifted to recommendations on what measures can be taken to ensure that National Treasury achieves the desired positive effect of the *Taxation Laws Amendment Act* on retirement planning. The recommendations suggest that various provisions must be included in the Pension Fund Circular 130 and that the circular must be made a directive to which all funds must adhere. If effect is given to the recommendations made in Chapter 4, communication between retirement funds and its members will be drastically improved, sufficient information will be effective and the goal with the *Taxation Laws Amendment Act* will be met.

Only after the above has been successfully implemented, retirement incentives will be effective.

Bibliography

Literature

Acton 2016 *Moneyweb*

Acton M "The ins and outs of retirement reform" 2016 *Moneyweb's Personal Finance* 10-11

Anon 2015 *MoneyM*

Anon "The impact of tax changes on your salary and retirement" 2015 *MoneyMarketing* 5

Anon 2015 *MoneyM*

Anon "Employers have duty to put retirement plans in place for staff: employee benefits" 2015 *MoneyMarketing* 19

Anon 2016 *MoneyM*

Anon "Employee benefits: an under-utilised strategic tool SMEs: employee benefits" 2016 *MoneyMarketing* 23

Anon 2015 *MoneyM*

Anon "Reform not a drawback for provident fund members" 2015 *MoneyMarketing* 24

Bekker 2003 *An assessment: Defined contribution funds and retirement*

Bekker F *An assessment: Defined contribution funds and retirement* (LLM-Dissertation Potchefstroomse Universiteit vir Christelike Hoër Onderwys 2003)

Botha *et al The South African Financial Planning Handbook*

Botha L *et al The South African Financial Planning Handbook* 2015 ed (LexisNexis Durban 2015)

Caims 2015 *Moneyweb*

Caims P "*Could you survive on less than R10 000.00 a month?"* 2015 Moneyweb's Personal Finance 1

Clark *Moneyweb*

Clark J "Save more to get bigger tax rewards" *Moneyweb's Personal finance* (March 2013) 11-12

De Beer 2014 *JEF*

De Beer J "Helping South Africans achieve a better income in retirement: A critical evaluation of the impact of treasury proposals" 2014 *JEF* 185-202

Dennis 2013 *Section 37C of the Pensions Funds Act, 37 of 1956: A social security measure to escape destitution*

Dennis MM *Section 37C of the Pensions Funds Act, 37 of 1956: A social security measure to escape destitution* (Mini-dissertation University of Limpopo 2013)

George 2006 *Analysis of the South African pension fund conversions: 1980-2006; developing a model for dealing with environmental changes*

George DT *Analysis of the South African pension fund conversions: 1980-2006; developing a model for dealing with environmental changes* (PhD-thesis University of South Africa 2006)

Godden 2010 *TAXtalk*

Godden K "Pension funds, provident funds and retirement annuities" *TAXtalk* (May/June 2010) 24-25

Hugo 2016 *MoneyM*

Hugo P "Considerations for investing tax-free: investing" 2016 *MoneyMarketing* 18

Hunter "Legislative changes that should be made in order to more properly reflect the pension promise that an employer makes to its employees and to better protect retirement savings"

Hunter R "Legislative changes that should be made in order to more properly reflect the pension promise that an employer makes to its employees and to better protect retirement savings (a personal view)" (Unpublished contribution delivered at the Institute of Retirement Funds Conference September 2004)

Kamdar 2016 *Tax Professional*

Kamdar M "Retirement Reforms: Demystified" 2016 *Tax Professional* 16-18

Kokott *The evaluation of different retirement investment options as savings and tax planning tools*

Kokott J *The evaluation of different retirement investment options as savings and tax planning tools* (MCom-dissertation University of Pretoria 2011)

Lamprecht 2016 *Tax Breaks Newsletters*

Lamprecht I "Three things you should know about retirement reform: tax reform" 2016 *Tax Breaks Newsletters* 4-5

Lamprecht 2016 *Personal Finance Newsletter*

Lamprecht I "Retirement reform 'still alive', but is it well?" 2016 *Personal Finance Newsletter* 16

Marumoagae 2012 *PELJ*

Marumoagae MC "*Do boards of trustees of South African retirement funds owe fiduciary duties to both the funds and fund members? The debate continues"* 2012 *PELJ* 554-569

Mhango *Can inaccurate benefit statements lead to pension fund liability under the South African Pensions Funds Act*

Mhango M *Can inaccurate benefit statements lead to pension fund liability under the South African Pensions Funds Act* (University of Witwatersrand 2011)

National Treasury 2016 *Moneyweb*

National Treasury "Tax benefits continue, annuitisation postponed" *Moneyweb's personal finance* March 2016 6-7

Nevondwe and Ramatji 2014 *J. Public Adm.*

Nevondwe L and Ramatji K "The Governace of retirement funds in the public sector: pitfalls and prospects" 2014 *J. Public Adm. Policy Res.* 274-286

Pension Funds Circular 86

Pension Funds Circular 90

Pension Fund Circular 113

Pension Funds Circular 130

Passmoor 2016 *Without Prejudice*

Passmoor D 2016 "Trustees in a litigious environment" *Without Prejudice* 30-32

Pricewaterhouse 2016*Tax Alert*

PricewaterhouseCoopers "*Retirement fund reform"* 2016 Alert National Tax Technical January 2016 1-3

Reddy 2012 *What do individuals think about compulsory preservation funding?*

Reddy C *What do individuals think about compulsory preservation funding?* (Research project University of Pretoria 2012)

Rossouw 2016 *MoneyM*

Rossouw C "More for the future you, less for the tax man" 2016 *MoneyMarketing* 21

Schoeman and Nhabinde 2009 *J. Public Adm.* Policy Res.

Schoeman NJ and Nhabinde VC "Impact of tax induced retirement benefit schemes on consumption and saving in South Africa" 2009 *J. Public Adm.* Policy Res. 1079-1089

Stiglingh *et al Silke: South African Income Tax*

Stiglingh M *et al Silke: South African Income Tax* 2015 ed (LexisNexis Durban 2015)

Sigwadi 2008 *SA Merc LJ*

Sigwadi M "The personal liability of pension fund trustees for breach of fiduciary duties" 2008 *SA Merc LJ* 331-346

Van der Merwe 2015 *MoneyM*

Van der Merwe S "What are tax-free investments?" 2015 *MoneyMarketing* 14

Van Rensburg 2014 *An overview of taxation in the South African retirement funding industry*

Van Rensburg RH *An overview of taxation in the South African retirement funding industry* (LLM Dissertation University of Cape Town 2014)

Williams 2015 *MoneyM*

Williams R "Proposed changes to retirement fund contributions: news & opinion" 2015 *MoneyMarketing* 6

Case Law

Chairman of the Sanlam Pensioenfonds v Registrar of Pension Funds 2007 (3) SA 41 T

Johannesburg Municipality Pension Fund v NCB Employee Benefits (Pty) Ltd (unreported) case number 74/01 of 11 April 2001

Lediga v Bosal Afrika Group Provident Fund 2001 7 BPLR 2211 (PFA)

Linkie Tshwarano Mantsho v Managing Director of the Municipal Employees Pension Fund (MEPF) and others (case number 37226/2014)

Slamat v The Private Security Sector Provident Fund and another 2013 2 BPLR 273 (PFA)

Rodseth v Dynamique SA Umbrella Provident Fund and another 2015 2 BPLR 263 (PFA)

Wentworth v GG Umbrella Provident Fund & Others 2009 1 BPLR 87

Legislation

Divorce Act 70 of 1979

Financial Advisory and Intermediary Services Act 37 of 2002

Financial Institutions (Protection of Funds) Act 28 of 2001

Income Tax Act 52 of 1962

Pension Funds Act 24 of 1956

Taxation Laws Amendment Act 25 of 2016

Internet sources

Anon date unknown http://www.vanrooyenraath.co.za/financial-literacy/double-tax-liability-early-withdrawal-retirement-benefits

Anon date unknown *Double tax liability for early withdrawal of retirement benefits* http://www.vanrooyenraath.co.za/financial-literacy/double-tax-liability-early-withdrawal-retirement-benefits accessed 1 November 2016

Anon 2015 https://www.10x.co.za/publications/impact-of-the-retirement-reform-coming-into-effect-march-2016/

Anon 2015 *The impact of retirement reform coming into effect on 1 March 2016* https://www.10x.co.za/publications/impact-of-the-retirement-reform-coming-into-effect-march-2016/ accessed 18 January 2016

Anon 2015 http://www.fanews.co.za/article/compliance-regulatory/2

Anon 2015 *Registrar of pensions asked to probe long delay in rebuilding fund* http://www.fanews.co.za/article/compliance-regulatory/2 accessed 13 September 2016

Anon Date unknown https://www.10x.co.za/corporate/corporate-investors/starting-a-retirement-fund/product-pension-fund-or-provident-fund/

Anon Date unknown *Product: pension or provident fund?* https://www.10x.co.za/corporate/corporate-investors/starting-aretirement-fund/product-pension-fund-or-provident-fund/ accessed 6 February 2016

Anon 2015 http://www.sars.gov.za/Tax-Rates/Income-Tax/Pages/Retirement-Lump-Sum-Benefits.aspx

Anon 2015 *Retirement Lump sum benefits* http://www.sars.gov.za/Tax-Rates/Income-Tax/Pages/Retirement-Lump-Sum-Benefits.aspx accessed 8 February 2016

Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/

Anon 2014 http://finweek.com/2014/10/09/retirement-retirees-come-short/ accessed 9 February 2016

Anon date unknown http://www.totrust.co.za/200602_libertylife.htm

Anon date unknown *Employee retirement funds – communication and disclosure* http://www.totrust.co.za/200602_libertylife.htm accessed 12 February 2016

Anon 2015 https://www.ensafrica.com/news/tax-treatment-of-contributions-to-retirement-funds

Anon 2015 *Tax treatment of contributions to retirement funds* https://www.ensafrica.com/news/tax-treatment-of-contributions-to-retirement-funds?Id=1910&STitle=retirement%20funds%20ENSight accessed 29 February 2016

Cabot-Alletzhauser 2014 http://benefitsbarometer.co.za/2014/06/26/unintended-consequenses-pensionable-pay/

Cabot-Alletzhauser A 2014 *The unintended consequences of pensionable pay* http://benefitsbarometer.co.za/2014/06/26/unintended-consequenses-pensionable-pay/

Department of National Treasury 2015 http://www.treasury.gov.za/publications/RetirementReform

Department of National Treasury 2015 *Advantages of the tax and retirement reforms contained in the Taxation Laws Amendment Bill 2015* http://www.treasury.gov.za/publications/RetirementReform accessed 4 February 2016

Department of National Treasury 2012 http://www.treasury.gov.za/publications/RetirementReform

Department of National Treasury 2012 *Strengthening retirement savings* http://www.treasury.gov.za/publications/RetirementReform/20120314%20-%20Strengthening%20retirement%20savings.pdf accessed 29 February 2016

Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Incentivising

Department of National Treasury 2012 *Incentivising non-retirement savings* http://www.treasury.gov.za/comm_media/press/2012/Incentivising%20non-retirement%20savings.pdf accessed 29 February 2016

Department of National Treasury 2015 http://www.treasury.gov.za/comm_media/press/2015

Department of National Treasury 2015 *Urgent request for public comment on the timing of uniform taxation and annuitisation for retirement funds in the* *taxation laws amendment bill, 2015* http://www.treasury.gov.za/comm_media/press/2015 accessed 28 January 2016

Department of National Treasury 2013 http://www.treasury.gov.za/documents/national

Department of National Treasury 2013 *2013 Retirement reform proposals for further consultation* http://www.treasury.gov.za/documents/national%20budget/2013/2013%20Retirement%20Reforms.pdf accessed 16 September 2016

Department of National Treasury Unknown http://www.gepf.gov.za/uploads/newsletters/FAQ

Department of National Treasury Unknown *Frequently asked questions on retirement reform* http://www.gepf.gov.za/uploads/newsletters/FAQ_on_Retirement_Reform_(National_Treasury).pdf accessed 13 September 2016

Department of National Treasury 2012 http://www.treasury.gov.za/comm_media/press/2012/Preservation

Department of National Treasury 2015 *Preservation, portability and governance for retirement funds* http://www.treasury.gov.za/comm_media/press/2012/Preservation%20portability%20and%20governance%20%2021%20Sept%202012%20.pdf accessed 16 September 2016

Du Preez 2014 http://www.fin24.com/Savings/Tools/8-points-to-clarify-retirement-reform

Du Preez E 2014 *8 Points to clarify retirement reform* http://www.fin24.com/Savings/Tools/8-points-to-clarify-retirement-reform accessed 5 February 2016

Financial Services Board 2013 *https://www.fsb.co.za/Departments/retirementFund/Documents/Registrar*

Financial Services Board 2013 *Annual report of the registrar of pension funds for the year ending 31 December 2013 https://www.fsb.co.za/Departments/retirementFund/Documents/Registrar%20of%20Pension%20Funds%20Fifty-Fourth%20annual%20report%202012%20Issued%20March%202015.pdf* accessed 17 February 2016

Liberty Corporate date unknown http://www.libertycorporate.co.za/our-brochures/Documents/our-brochures/all-you-need-to-know.pdf

Liberty Corporate date unknown *All you need to know of retirement funding* http://www.libertycorporate.co.za/our-brochures/Documents/our-brochures/all-you-need-to-know.pdf accessed 22 February 2016

Lukhaimane 2015 http://www.fanews.co.za/article/compliance-regulatory/2/Pension Funds Act-pension-fund-adjudicator/1026/judge-rules-Pension Funds Act-s-determinations-enforceable-as-a-judgement/18743

Lukhaimane M 18 September 2015 *Judge rules PENSION FUNDS ACT's determinations enforceable as a judgement* http://www.fanews.co.za/article/compliance-regulatory/2/Pension Funds Act-pension-fund-adjudicator/1026/judge-rules-Pension Funds Act-s-determinations-enforceable-as-a-judgement/18743 accessed 19 September 2016

Mainwood 2013 https://www.barnett-waddingham.co.uk/comment-insight/briefings/2013/12/10/pensionable-salary-vs-final-pensionable-salary-vs-/

Mainwood J 2013 *Pensionable Salary vs Final Pensionable Salary vs Final Remuneration* https://www.barnett-waddingham.co.uk/comment-insight/briefings/2013/12/10/pensionable-salary-vs-final-pensionable-salary-vs-/ accessed 12 February 2016

Ostler 2012 http://www.schoemanlaw.co.za/wp-content/uploads/2012/12/Fringe-Benefits-Article.pdf

Ostler L 2012 *An introduction to fringe benefits – what employees should know* http://www.schoemanlaw.co.za/wp-content/uploads/2012/12/Fringe-Benefits-Article.pdf accessed 23 February 2016

The South African Labour Guide date unknown http://www.labourguide.co.za/general/499-pension-and-provident-funds

The South African Labour Guide date unknown *Pension and provident funds* http://www.labourguide.co.za/general/499-pension-and-provident-funds accessed 6 February 2016

Ward date unknown file:///C:/Users/Aletje/Downloads/Retirement%20Annuity%20reform%20July%202014%20(1)%20(5).pdf

Ward G date unknown *Retirement fund contributions reform – are you prepared?* file:///C:/Users/Aletje/Downloads/Retirement%20Annuity%20reform%20July%202014%20(1)%20(5).pdf accessed 29 February 2016

cumlaude
languagepractitioners

Director: CME Terblanche - BA (Pol Sc), BA Hons (Eng), MA (Eng), TEFL
22 Strydom Street
Baillie Park, 2531
Tel 082 821 3083
cumlaudelanguage@gmail.com

DECLARATION OF LANGUAGE EDITING

I, Christina Maria Etrecia Terblanche, hereby declare that I edited the research study titled:

Sufficient information and the effectiveness of the Taxation Laws Amendment Act 25 of 2016 on retirement planning

for A van den Berg for the purpose of submission as a postgraduate dissertation for examination. Changes were suggested and implementation was left to the discretion of the author.

Regards,

CME Terblanche

Cum Laude Language Practitioners (CC)

SATI accr nr: 1001066

Registered with PEG