



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

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**DRAFT REGULATIONS FOR PUBLIC COMMENT**

**10 JUNE 2014**

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**INCOME TAX ACT, 1962: PUBLICATION OF PROPOSED REGULATIONS MADE  
IN TERMS OF PARAGRAPH 12D(5)(a) OF THE SEVENTH SCHEDULE ON THE  
DETERMINATION OF THE FUND MEMBER CATEGORY FACTOR**

Proposed regulations in terms of paragraph 12D(5)(a) of the Seventh Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962) are hereby published for public comment.

Please forward comments on the proposed regulations in writing by the close of business on **23 June 2014** to Nombasa Nkumanda at [Nombasa.nkumanda@treasury.gov.za](mailto:Nombasa.nkumanda@treasury.gov.za) and Adele Collins at [acollins@sars.gov.za](mailto:acollins@sars.gov.za).

## SCHEDULE

### Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in Income Tax Act, 1962 (Act No. 58 of 1962), bears the meaning so assigned, and—

**“annuity accrual rate”** means, in relation to a period for which a certificate is issued, the increase in the annuity benefit of a defined benefit component —

- (a) occurring as a result of fund membership during the period in respect of which the certificate is issued; and
- (b) expressed as the average of a proportion of final salary (as defined in the rules of the fund) in respect of all members of a fund member category;

as if all those members would have remained members of the fund until those members may retire from employment with unreduced benefits in terms of the rules of fund.

**“annuity benefit”** means an annuity—

- (a) payable by a fund on retirement in consequence of membership or past membership of that fund;
- (b) in respect of which a portion of the final salary (as defined in the rules of the fund) is utilised to calculate the amount of the benefit of the fund member; and
- (c) in respect of a lump sum commuted for a payment in the form of an annuity;

**“lump sum”** means an amount—

- (a) payable by the fund on retirement in consequence of membership or past membership of that fund to a member of that fund or to a dependant or nominee of that member;
- (b) of which the value is calculated as constituting a portion of the final salary (as defined in the rules of the fund) of the fund member; and
- (c) any amount in respect of an annuity commuted for a payment in the form of a lump sum;

**“lump sum accrual rate”** means in relation to a period for which a certificate is issued, the increase in the lump sum of a defined benefit component—

- (a) occurring as a result of fund membership during the period in respect of which the certificate is issued; and

(b) expressed as the average of a proportion of final salary in respect of all members of a fund member category;

“**risk benefit**” means a benefit payable in respect of the death or permanent disablement of a member to that member or to a dependant or nominee of that member.

### **Fund member category factor is aggregate**

2. The fund member category factor must, for the purposes of paragraph 12D(2) of the Seventh Schedule to the Income Tax Act, 1962, be calculated by aggregating—

- (a) the defined contribution component factor determined as prescribed by regulation 3;
  - (b) the defined benefit component factor determined as prescribed by regulation 4;
  - (c) the underpin component factor determined as prescribed by regulation 5, and
  - (d) the risk benefit component factor determined as prescribed by regulation 6,
- for that fund member category.

### **Determination of defined contribution component factor**

3. (1) The defined contribution component factor is the contribution rate (as specified in the rules of the fund) in respect of the total of the contributions to the fund by the employee and the employer in respect of each defined contribution component.

(2) Any contribution in respect of a risk benefit provided by the fund directly or indirectly for the benefit of a member of the fund or a dependant or nominee of that member must not be taken into account in determining the fund member category factor as contemplated in subregulation (1).

(3) If a fund member is entitled to receive more than one contribution component in respect of a fund member category—

- (a) the fund must calculate a defined contribution factor in respect of each defined contribution component; and

- (b) the defined contribution component factor for the purposes of this regulation is the sum of the amounts calculated in terms of paragraph (a).

#### **Determination of defined benefit component factor**

4. (1) The defined benefit component factor in respect of a defined benefit component must be determined in accordance with the formula—

$$X = (A \times B) + (C \times D)$$

in which formula—

- (a) 'X' represents the defined benefit component factor to be determined;
- (b) 'A' represents the annuity accrual rate;
- (c) 'B' represents the number that must be obtained—
  - (i) by establishing the percentage in respect of the amount of the annual pension increase as contemplated in section 14B(3)(a) of the Pension Funds Act in terms of the rules of the fund based on the consumer price index for members of that fund member category;
  - (ii) by establishing the number of the average age at which members of that fund member category retire without any retirement benefit being reduced or increased as a result of that retirement in terms of the rules of the fund; and
  - (iii) where the column and line intersect when—
    - (A) the percentage in subparagraph (i) is matched with the corresponding percentage in the "Consumer Price Index" line in Schedule I; and
    - (B) the number of the age contemplated in subparagraph (ii) is matched with the corresponding number in the "Youngest Age of Retirement" column Schedule I:

Provided that if any percentage contemplated in subparagraph (i) or any number contemplated in subparagraph (ii) does not correspond with any percentage or number in Schedule 1, the percentage to be taken into account is the lesser of the nearest percentage in

Schedule 1 to the established percentage and the number to be taken into account is the lower of the nearest number in Schedule 1 to the established number.

(d) 'C' represents the lump sum accrual rate; and

(e) 'D' represents the number 0.9.

(2) If a fund member is entitled to receive more than one defined benefit component in respect of a fund member category—

(a) the fund must calculate a defined benefit component factor in respect of each defined benefit component; and

(b) the defined benefit component factor for the purposes of this regulation is the sum of the factors calculated in terms of paragraph (a).

### **Determination of underpin component factor**

5. (1) The underpin component factor must be determined in accordance with the formula—

$$X = A + B \times C$$

in which formula—

(a) 'X' represents the underpin component factor to be determined;

(b) 'A' represents the greater factor of—

(i) the defined contribution component factor calculated utilising the formula in regulation 3(1) for the defined contribution component used for the purposes of determining the underpin component; or

(ii) the defined benefit component factor calculated by utilising the formula in regulation 4(1) for the defined benefit component used for the purposes of determining the underpin component.

(c) 'B' represents the number 0.10; and

(d) 'C' represents the smaller factor of—

(i) the defined contribution component factor calculated utilising the formula in regulation 3(1) for the defined contribution component used for the purposes of determining the underpin component; or

- (ii) the defined benefit component factor calculated by utilising the formula in regulation 4(1) for the defined benefit component used for the purposes of determining the underpin component.

(2) If a fund member is entitled to receive more than one underpin component in respect of a fund member category —

- (a) the fund must calculate an underpin component factor in respect of each defined underpin component; and
- (b) the underpin component factor for the purposes of this regulation is the sum of the factors in terms of paragraph (a).

### **Determination of risk benefit component factor**

6. (1) The risk benefit component factor must be determined in respect of all risk benefits provided by the fund directly or indirectly for the benefit of a member of the fund or a dependant or nominee of that member

(2) The risk benefit component factor must be determined in accordance with the formula

$$X = A \times B$$

in which formula—

‘X’ represents the risk benefit component factor to be determined;

‘A’ represents the number 0.01; and

‘B’ represents the average of a proportion of retirement funding income in respect of all members of the fund member category in respect of risk benefits to which the member or his or her dependants or nominees would have become entitled if the member had died during the year of assessment in respect of which the certificate is issued.

(2) If a fund member is entitled to receive more than one risk benefit component in respect of a fund member category—

- (a) the fund must calculate a risk benefit component factor in respect of each risk benefit; and
- (b) the risk component factor for the purposes of this regulation is the sum of the factors calculated in terms of paragraph (a).

**Short title and commencement**

7. These Regulations are called the Regulations in terms of paragraph 12D(5)(a) of the Seventh Schedule to the Income Tax Act, 1962, on the determination of the fund member category factor and come into operation on 1 March 2015.