

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 179

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Mr D T George (DA) to ask the Minister of Finance:

- (1) Whether regulations will be promulgated to set the applicable rate of interest with regard to employers who make late payments of pension fund contributions; if not, why not; if so,
- (2) whether the rate is adjusted on an ongoing basis; if not, why not; if so, what are the relevant details;
- (3) whether the Financial Services Board (FSB) keeps records on employers who default on a continual basis; if not, why not; if so,
- (4) whether steps have been taken against such employers; if not, why not; if so, what steps?

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Reply:

- (1) No, there is no legal reason to promulgate new regulations as there are already two existing regulatory notices in place. Of the two regulatory notices, the first is Notice no 338 (Government Gazette of 6 April 2001) issued to give effect to Section 13A (7) of the Pension Fund Act (No 24 of 1956), which requires that interest be charged when employers make late payments "not later than seven days after the end of the month for which such contribution is payable". This notice determines the rate of interest to be imposed, by referring to the Usury Act (No 73 of 1968). The second notice updates the first notice to take into account the National Credit Act (No 34 of 2005), and was published as Notice No. 29661 in the Government Gazette of 26 February 2006, and covers all cases of late payments after 1 June 2007.

These regulations are considered sufficient at this stage from a legal perspective. I will, however, request the National Treasury to consider whether, for the sake of simplicity, there is a need to consolidate the current regulations into one gazette.

- (2) Yes, the rates are adjusted as current regulations are based on the bank repurchase rate as the base rate. As the Monetary Policy Committee (MPC) of the South African Reserve Bank adjusts the bank repurchase rate, the rates applying to late payments are also adjusted in tandem with the adjustment in the Repurchase Rate.
- (3) Yes, according to the Financial Services Board (FSB), records are kept of defaulting employers. Regulation 33 of the Pension Funds Act outlines the obligations and the procedures to be followed by the principal officer of a pension fund in reporting the non-compliance of employer member/s of a fund to the FSB.
- (4) Yes, the FSB has indicated that it does take steps in this instance, but such steps are very limited, as it is the trustees of a pension fund who are required by law to institute relevant action. Nevertheless, when approached for assistance by a fund, the FSB engages the relevant employers with a view to obtaining payment commitments. Whilst the trustees are also able to report the non-payment of contributions to the prosecuting authorities, the process of formal prosecution is a long process and does not resolve such matters urgently. With the establishment of the FSB's Enforcement Tribunal which came into effect on 1 November 2008, the intention is that reported cases can instead be referred to the Enforcement Committee as it provides a more cost effective and expedient process to deal with the matter of late/non-payment of contributions. In this respect, it is to be expected that the FSB will play a stronger role in assisting to take effective action against employers who make late (or non-) payments of pension funds.