

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 2088 [NW2369E]

2088. Ms S J Graham (DA) to ask the Minister of Finance:

With reference to his reply to question 2644 on 7 December 2020 on the non-payment of pension funds by municipalities, what (a) measures have been taken by the National Treasury to address the non-payment of pension contributions by the Dr Beyers Naudé Local Municipality to third parties, (b)(i) undertakings have been given to the National Treasury by the specified municipality to ensure that all pension monies have been paid up and (ii) date will this be achieved, (c) measures does the National Treasury have in place to ensure that not only the contributions, but the interest that would have been earned, is paid and (d) measures will be taken by the National Treasury if the municipality fails to meet its obligations in this regard?

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REPLY:

- a. National Treasury after being informed by the Pension Fund concerned, wrote to the municipality early in October 2020 to request the municipality to pay the outstanding debt and also to warn the Municipal Manager that it is a criminal offence not to pay over the pension contributions deducted from the employees to the Pension Fund.

- b. (i) The municipal manager responded in late October 2020 acknowledging the debt and committed to settle all the outstanding amounts.

(ii) National Treasury is aware that by 15 December 2020, the municipality did not follow through on its commitment to settle all the outstanding amounts, but has since made a number of payments since January 2021, including current and outstanding debt. To date as at 08 September 2021, the total outstanding pension debt is at R16.4 million, which is a reduction by 50 per cent since January 2021.

As the Pension Funds Act currently stands, the Dr Beyers Naude Municipality is required to pay over pension contributions, in terms of the rules of the fund, deducted from member's remuneration within 7 days of the end of the month in terms of section 13A(1) read with 13A(3) of the Pension Funds Act, 24 of 1956 ("the Act"). Further, in terms of section 13A(7) interest is payable on the late payment of contributions, which starts running from the 1st day of the end of the month in terms of Regulation 33(7). Regulation 33(4) further requires the monitoring person, usually the Principal Officer, to bring the non-compliance to the attention of the affected members and advise the FSCA of the action taken. If the non-compliance persists after 90 days, the Principal Officer must report the matter to the SAPS. Should the Board of the Fund not take the requisite action against the employer, it may face regulatory action.

- c. National Treasury does not have the power to take direct measures against a municipality that has not paid, as such power resides firstly with the provincial government. National Treasury can only act in terms of section 139 of the Constitution if the province has failed to exercise its oversight over the municipality.
- d. The powers of the National Treasury are very limited in following up on non-payment by municipalities, and can only intervene via a province in terms of section 139 of the Constitution. National Treasury is working on amending the PFMA and MFMA to put in place a stronger framework to deal with non-payments on tax, pension contributions, as well as to suppliers like Eskom and Water Boards.

National Treasury does not have the power to stop the transfer of the equitable share funds to a municipality in terms of Section 216(2) of the Constitution and other applicable legislation in the event of persistent failure by a municipality to honour its financial commitments. National Treasury does require municipalities to report on the non-payment of its commitments to SARS, pension and other staff benefits deducted from municipal officials to be paid over to the appropriate Funds and / or institutions. Failure for municipalities to provide this evidence may result in their equitable share being withheld in an effort to enforce compliance.

Until further legislative changes are made to the MFMA, the power of the National Treasury to directly intervene in a municipality is very limited, and often restricted to a form of moral suasion and naming and shaming, or if it is suspected that there is a case of criminal actions, to refer such matter to the police for further action.