NATIONAL ASSEMBLY

QUESTION FOR ORAL REPLY

TRANSFERRED TO WRITTEN REPLY

QUESTIONS NUMBER: 814*275 [NW1049E]

DATE OF PUBLICATION: 10 SEPTEMBER 2024

814★275. Mr S Thambo (EFF) to ask the Minister of Finance:

With reference to his reply to question to 2088 on 27 September 2021, wherein he indicated that the National Treasury is working on amending the Public Finance Management Act, Act 1 of 1999 (PFMA), and in view of the fact that approximately 172 municipalities are in arrears for periods ranging from 6 to 240 months, what (a) steps has he taken to initiate legislative changes to amend the PFMA and Municipal Finance Management Act, Act 56 of 2003, to put in place a stronger framework to deal with non-payments on tax, pension contributions, as well as to suppliers such as Eskom and water boards and (b) total number of municipalities has the National Treasury found to have been deducting money from the salaries of municipal workers and not paying it towards workers' pension funds? NW1049E

REPLY:

(a) The process to amend the Municipal Finance Management Act, Act 56 of 2003 (MFMA) and the Public Finance Management Act, Act 1 of 1999 (PFMA) is at an advanced stage. It is anticipated that both Bills will be published for public comments before the end of the 2024/2025 financial year.

In local government, the intention with the proposed amendments is to specifically incorporate the failure to comply with tax, duty, pension and other statutory commitments for financial reasons as one of the criteria for determining whether a particular municipality has a serious financial problem. This will assist National and provincial treasuries to determine whether a financial recovery plan is warranted, with the aim to assist the municipality to improve its financial affairs.

For national and provincial departments, it is prevalent that late payment of invoices is triggered by factors, such as, cash blocking, high accruals from previous financial years, disputed invoices with suppliers, unresolved SCM-related challenges and other internal control deficiencies at departments. Treasury Regulation 8.2.3 provides that government must pay suppliers 30 days from receipt of an invoice. This requirement is applicable to departments, constitutional institutions and trading entities and the intention is to extend this requirement to public entities listed in Schedules 2 and 3 of the PFMA through the amendment of the PFMA.

Additionally, matters relating to pension funds are specifically regulated by the Pensions Funds Act, 1956 (PFA). The PFA already includes enforcement measures to address the failure to pay deductions to pensions funds.

Section 13A(1) of the PFA, requires the employer of any member of a pension fund to pay any contribution which in terms of the rules of the pension fund, is to be deducted from the member's remuneration, and any contribution for which the employer is liable in terms of the rules of the pension funds. Additionally, in terms of section 37(1)(a) of the PFA, any person who contravenes or fails to comply with section 13A of the PFA is guilty of an offence and liable on conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

The MFMA contains a similar obligation in section 65(2)(f) which requires accounting officers to ensure that all third-party statutory payments/commitments are made. Failure to do so will constitute an act of financial misconduct in terms of section 171 of the MFMA and the municipal council will have to process such an act in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

Therefore, the MFMA must be read together with the PFA in order to address the failure to pay contributions to the relevant pension fund.

(b) The relevant pension funds are required to submit information on defaulting municipalities to the Financial Sector Conduct Authority. National Treasury therefore relies on the list of defaulting employers as published by the Financial Sector Conduct Authority. The latest list published by the Financial Sector Conduct Authority on 26 March 2024, provides information as at 31 July 2023.