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irfa dispatch

THE RETIREMENT INDUSTRY NEWSLETTER

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Regulator issues new draft living annuity standards for the second time

The Financial Sector Conduct Authority (FSCA) has published a new draft set of Standards for Living Annuities and Communication for Members and Retirees. The Standards instruct retirement funds on how they must guide their members to make sound decisions about their retirement. This is the second draft following on the first draft last year by FSCA on the Standard on Investment Linked Living Annuities (living annuities). The new Standard sets out FSCA responses in response to queries by interested parties. The latest set must be responded to by interested parties by July 31 2020.

In my view, the FSCA draft Standard on Living Annuities should be used by retirement funds as a default, and as a guide by anyone using a living annuity bought directly from a linked-investment service provider or life assurance company. One most important change you should adhere to is on the drawdown rate of income from a living annuity. Stick to this and you will have a much better chance of financial survival. Research by the country's biggest retirement fund administrator, Alexander Forbes, has shown that by using higher drawdown rates than those suggested by FSCA, you will reach a "point of ruin" when your income declines in both nominal and after-inflation returns.

FSCA has now set down two drawdown rates. The first is the maximum drawdown rate at which retirement funds should aspire to when setting the rates. By using this drawdown rate scale, FSCA says retirees should be able to achieve a 90% probability of financial survival. This is based on average life expectancy and a balanced investment portfolio.

Age	Drawdown
55	4%
60	4.5%
65	5%
70	5%
75	5.5%
80	6%
85	7%

The new FSCA draft table also sets down a maximum allowable drawdown rate.

Age	Maximum Drawdown
55	6.5%
60	7%
65	8%
70	8%
75	8.5%
80	9.5%
85	11.5%

FSCA says retirement funds must encourage members who choose the default annuity to:

- Use the lower drawdown rate;
- Choose an underlying portfolio that is conservative; and annuity rates should be based on a couple, rather than an individual.

FSCA says that where a pensioner elects a living annuity on retirement, there is a risk that this could result in poor retirement outcomes for the pensioner, such as unsustainable income streams with a reduction in affordable annuity payments over time. The poor outcome could be caused by one or more of the following:

- The living annuity retirement savings being depleted too soon if the draw-down rate elected is too high. You meet an early "point of ruin";
- Poor investment returns on capital;
- The pensioner living longer than expected, exceeding the average age of death. So, this means you could well have a 50% chance of living longer. You should always get a quote on the average rate of death at your retirement date and for your gender; and
- Excessive fees or charges. ***Full Report:*** ***https://www.dailymaverick.co.za/article/2020-06-16-regulator-issues-new-draft-living-annuity-standards-for-the-second-time/#gsc.tab=0***

Daily Maverick | 16 June 2020

Important things to consider before withdrawing retirement savings

Cashing in your retirement savings can trigger a high tax implication.

The lockdown has had a massive impact on our economy, and as a result, many companies are having to shut their doors or retrench staff to survive. Many individuals who have recently been retrenched are tempted to tap into retirement savings to make ends meet. We do understand you may require access to these funds if this is your only source of savings but the reality is that retirement will approach us at some point and we need to take careful consideration before cashing in our retirement nest egg.

We would like to highlight a few things to consider before accessing your retirement savings:
There are three retirement funding options available. These are a pension or provident fund, a retirement annuity, or a preservation fund. Pensions and provident funds will be dealt with together as their tax implications are the same for the purposes of this article. A retirement annuity investment, you only have access to within limits when you reach retirement which is from age 55. A company pension or provident fund, you will have full access to the funds if you resign or are retrenched from your employment. If you decide to liquidate your company pension or provident fund at retrenchment, you need to bear in mind the tax implications that are involved.

The qualifying lump sums will be taxed according to the retirement lump sum tax table:

RETIREMENT FUND LUMP SUM BENEFITS OR SEVERANCE BENEFITS	
Taxable Amount (R)	**Rates of tax (R)**
0 – 500 000	0% of taxable income
500 001 – 700 000	18% of taxable income above 500 000
700 001 – 1 050 000	36 000+ 27% of taxable income above 700 000
1 050 001 and above	130 500 + 36% of taxable income above 1 050 000
Retirement lump sum benefits consist of lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund on death, retirement, or termination of employment.	

IMPORTANT: A different tax table will apply to individuals who have decided to liquidate their company pension or provident fund on resignation.

Please note the above table applies to the lump sum taken from a company pension or provident fund if withdrawn in cash when retrenched and will also apply to any retrenchment or severance package paid by the employer. This means that the first R500 000 is not taxable, but please be aware this is a lifetime limit and does not apply separately per lump sum. An important point to consider that many people do not, is any pension savings taken in cash before retirement will negatively impact any cash portion taken at retirement.

The tax implications on a cash withdrawal at retirement will be high if you have utilised the full or portion of the R 500 000 tax-free lifetime limit.

When the South African Revenue Service (Sars) calculates the tax liability on a retirement cash lump sum they will take into consideration any previous taxable withdrawal, retirement (including retrenchment benefits) and severance benefits you have received into account. A better solution is to transfer your pension savings as there is no negative tax implication and the money is invested tax-free. You can transfer either to your new employer fund or you have the option of transferring your savings to a preservation fund or a retirement annuity.

A preservation fund does not allow you to make additional contributions, but it is specifically designed to invest your lump sum from your company pension and provident fund. If you have not previously withdrawn from your preservation fund, it does allow one-off access to your funds before retirement if required in the future, subject to tax. A retirement annuity allows you to invest your current pension or provident fund savings and allows you to make additional contributions either as a lump sum or debit order to continue to save for retirement.

While cashing in your retirement savings may seem like the best solution now, we recommend you try avoiding this as it can seriously impact your ability to retire comfortably and can trigger a high tax implication. We do encourage you to consult with an independent financial advisor on the best solution for your circumstances.

Moneyweb | 15 June 2020

How well long vs short hedge funds negotiated the crash?

Four fund managers discuss their portfolio positioning before and after the market crash, and what happened. A poll during this week's Citywire South Africa Virtual 2020 event found that just over 50% of participating fund selectors use hedge funds in their portfolios. This shows that there has been a reasonably wide-spread adoption of these strategies. The market turmoil of 2020 has also been the time when hedge funds should be expected to show their value.

This is the type of environment in which hedge fund managers should come to the fore, as many of them target lower drawdowns and volatility. This would have been required from market neutral funds most specifically, but the majority of money in local hedge funds is in equity long-short strategies. So, how did these portfolios perform? The table below shows the monthly returns to the end of April of a selection of local equity long-short funds, drawn from their fact sheets.

Performance of selected South Africa long/short equity – long bias hedge funds

Fund	Jan 2020	Feb 2020	March 2020	April 2020	YTD (to end of April)
36ONE SNN QI hedge fund	1.71%	-0.64%	-0.13%	2.70%	3.66%
Bateleur Long Short Prescient QI hedge fund	-0.80%	-5.70%	-2.90%	7.90%	-2.00%
Fairtree Assegai Equity Long Short SNN QI hedge fund	-0.09%	-11.09%	-29.59%	34.26%	-16.03%
Laurium Long Short Prescient RI hedge fund	-2.00%	-6.30%	-14.80%	9.70%	-14.20%
Mazi NCIS Long Short Qualified hedge fund	-1.38%	-5.28%	-9.25%	6.49%	-9.73%
Numus Long Short Prescient RI hedge fund	-1.89%	-2.18%	-2.65%	0.00%	-6.58%
Obsidian SCI Long Short Retail hedge fund	1.38%	-5.32%	-15.17%	10.27%	-10.21%
Peregrine Capital High Growth H4 QI hedge fund	-0.32%	-5.54%	-0.78%	6.14%	-0.84%
Protea South Africa SNN Retail hedge fund	-1.29%	-7.99%	-9.56%	-0.45%	-18.23%
FTSE/JSE All Share Index					-10.39%

This shows a fairly wide disparity of returns across these strategies. Source: Fund minimum disclosure documents

It is important to consider that qualified hedge funds and retail investor hedge funds are not strictly comparable. Managers of different funds are also mandated to take different levels of risk and can use different amounts of leverage. This emphasises how important it is for fund selectors to be thorough in their manager selection when looking at this market. To understand how some of these managers dealt have with the Covid-19 crisis, Citywire asked four of them to discuss their portfolio positioning before and after the market crash, and whether their funds behaved the way they would have expected. ***Full Report:*** ***https://www.moneyweb.co.za/investing/how-well-long-vs-short-hedge-funds-negotiated-the-crash/***

Moneyweb | 13 June 2020

Risks of transitioning to retirement during the Covid-19 era

One of the most underrated benefits of an advisor is helping you stay sane when the world is looking a bit messy, reckons Michael Prinsloo from Alexander Forbes.

NOMPU SIZIBA: The impact of Covid-19 on economies and household incomes has been extreme and a worry. And, no doubt, those of pension age, and even those who are set to retire soon, must be worried about their income prospects as the economy contracts and equity markets remain skittish. To unpack some of the risks for pensioners currently, and possible solutions in ensuring a better outlook for one's finances as a retiree, I'm joined on the line by Michael Prinsloo, the head of products at Alexander Forbes. Thanks very much for joining us, Michael. In these days of poor economic prospects and turbulent global markets, what are some of the key risks facing retirees – and even those who are set to retire soon?

MICHAEL PRINSLOO: There are a couple of risks that face retirees during this period – and not just as a result of Covid. The three main risks as we see them are outliving your savings and not having your income stretch as long as your life; not looking after people who depend on you after retirement and not taking into account those individuals; and your planning; and the last one is really that your income doesn't increase as fast as your expenses increase – and that speaks to investment markets and so on.

NOMPU SIZIBA: Yes.

MICHAEL PRINSLOO: Those are really the three risks – longevity, structuring appropriately and not getting the right kinds of increases.

NOMPU SIZIBA: What should a retiree, who depends on a living annuity which is directly related to the performance of the stock markets, consider as they go about their business currently?

MICHAEL PRINSLOO: Well, obviously the sort of Covid pandemic and what's happening in markets has created a lot of volatility. And so I think the risks have been sort of highlighted and heightened. But they are the same risk that has faced retirees with living annuities for a while – that is, to ensure that you do not draw high amounts out of your income, unsustainable amounts. And so you need to ensure that your draw-down rates are sufficiently low to ensure that your savings will last you for as long as you need that income, but also that you stick to the long-term strategy that you, together with potentially your advisor, put in place. And that you don't chop and change and panic.

NOMPU SIZIBA: Of course, the regulator has cut these particular band of retirees some slack by allowing them to tap into more or less of their monthly income, although it's only limited for a certain period of time.

MICHAEL PRINSLOO: That's correct. Retirees with living annuities have been allowed to change their drawdown rate for a period of four months, down to either 0.5% from 2.5%, or up to 20% from 17.5%. Obviously you need to be very careful drawing down at those sorts of levels.

NOMPU SIZIBA: What considerations do employees who are on the verge of retiring need to be making in these currently uncertain times? Should they go for a guaranteed income or a living annuity? Just take us through the options.

MICHAEL PRINSLOO: I think the first thing that retirees need to do is to focus on what is sort of in their control. Those things are, firstly, understanding their budgets. It sounds very, very simple, and we've set out kind of five steps that you could follow to do so. But really you need to understand what your needs are first and foremost –document them, understand them. So that's number one. Number two, you really need to understand the products that are available to you; those are either a life annuity – a guaranteed annuity, as we've said – or a living annuity. That depends on what your needs are in retirement, whether you need flexibility or whether you need a lifetime worth of income, but also whether you are looking after dependants, and if you've got staff, for example, or you've got dependants.

That will all drive those decisions that you need to make. The final one is your retirement and your retirement decisions, particularly at that point, constitute such a large financial transaction. It's one of the largest you might make in your lifetime, to be honest. And it really makes sense to get solid financial advice at that point to try and guide you through that decision. So those are the three steps that I would say retirees can take. If one of those annuity types is right for you actually depends on your situation, the amount that you've saved up, as well as the income that you actually require and what those needs are. There is not going to be one single right answer for every individual. ***Full Report:*** ***https://www.moneyweb.co.za/moneyweb-radio/risks-of-transitioning-to-retirement-during-the-covid-19-era/***

Moneyweb | 15 June 2020

Strengthen your retirement plan - activate these 6 levers

A recent Forbes article states that "people who check their accounts frequently and trade more frequently tend to buy high and sell low compared to people who rebalance once a year". Amid global concerns over the performance of retirement savings during these volatile economic times, it's natural for people to be concerned about reductions in their savings. However, a successful retirement plan is about much more than investment returns.

According to Andrew Davison, Head of Advice at Old Mutual Corporate Consultants, there are six important factors that drive retirement outcomes. "We think of these crucial factors as levers, and it's important to realise that they are dependent on each other. Often, people don't appreciate the ways that the various levers interrelate — they adjust one of the levers without making compensatory adjustments to one or more of the other levers.

Now more than ever, as the world continues to battle the economic fallout of the pandemic, investors should take into account the potential consequence of every move." Malusi Ndlovu, Old Mutual Corporate Consultants General Manager, says simply activating all six levers haphazardly will not produce the intended results. "There are combinations that make sense and many that don't. Ultimately, as you examine the six levers, you'll come to understand what makes sense for you," he says.

Lever 1: Contributions

“Your contributions don’t do the heavy lifting,” says Davison, “but they are your ticket to the game. If you don’t contribute enough to your retirement pot, and do it early enough, there won’t be enough to grow.”

Lever 2: Investment strategy

Time is every investor’s friend, especially if you want to leverage the ‘secret sauce’ of compound interest. It is worth noting that the secret sauce only works when you have a long-term investment horizon. “An example is Janet who left her previous employer and their pension fund in 2004. She preserved her retirement savings in a preservation fund. Since then she hasn’t touched it, but she also hasn’t added anything to it (as it’s not possible to add to a preservation fund),” says Davison. “Today, it’s worth more than five times the amount she initially transferred, thanks to the magic of compound interest.” This is despite the fact that the investment strategy for these savings has navigated a journey through the 2008 Global Financial Crisis and now the Covid-19 pandemic.

Lever 3: Preservation

The strategy of leaving savings untouched when changing jobs is probably one of the most difficult for retirement investors to heed, yet it is especially crucial if you want to meet the target of having nine or ten times your annual salary saved up at retirement date.

Lever 4: What to do with your capital at retirement

Your retirement date presents you with an array of important choices that will determine the quality of your retirement. For many people, it’s the point in time that they finally get their hands on all that loot that’s effectively been out of bounds until then. It’s a critical juncture and one that requires a cool head. “The decisions you make when you retire really are momentous and will determine how you live from then on,” Ndlovu says.

These decisions include how much to take as a lump sum, what type of annuity to use to convert capital into a monthly pension – which also includes the level of benefit you’d like to leave to beneficiaries, the level of future increases in pension you’d like to have and also how to plan for a spouse or other partner to receive income when you predecease them. There are also tax considerations and, potentially, decisions about where to live and hence about property. “Savers ought to be aware that a bad decision can undo a lifetime of good savings behaviour. To avoid getting into a difficult situation, investors should make use of an adviser or a free retirement benefits counsellor”. ***Full Report :https://www.iol.co.za/personal-finance/retirement/strengthen-your-retirement-plan-activate-these-6-levers-49297639***

IOL | 12 June 2020

Countless South Africans are owed pension benefits, and yet claiming is a constant battle

While few immediately associate youth issues with pensions, the reality is that many young people actively participate in and even depend on the pensions industry. This includes their participation in the ongoing struggle of millions to access more than R42-billion in pension benefits owed to individuals and families.

Young people interact with the pensions industry in various ways. Some in formal employment already contribute to a pension or benefit fund or are considering which fund to choose. Those counted among South Africa's spiralling youth unemployment figures (now at 53.18%) might never have considered a pension, but they will surely need it if they are to escape poverty. Then there are the many children being raised by their grandparents whose only source of income is their pension. But there is another group. The young people who are actively trying to secure the unpaid pension benefits of parents, grandparents or relatives who have been failed by the pensions industry.

Whichever way you slice it, pensions are an intergenerational issue, making the misdeeds of the pensions industry as much a youth justice issue as they are a geriatric one. In November 2019, Open Secrets released its investigative report *The Bottom Line: Who Profits from Unpaid Pensions?* The investigation catalogues the cancellation of over 6,000 pension funds in both flawed and unlawful ways. Hundreds of these funds had still not paid out their members. *The Bottom Line* implicates private fund administrators and the regulator – the Financial Sector Conduct Authority (FSCA) – in failing to fulfil their legal duties during the cancellations scheme and avoiding accountability in the fall-out.

Beyond the cancellations scheme, there are billions in unpaid benefits that remain in active funds. These include dedicated 'unclaimed benefits funds' set up by fund administrators to preserve the benefits until their beneficiaries are found and paid. Fund administrators and asset managers continue to earn fees from these assets. Yet administrators, fund trustees and the regulator – despite having significant resources – have not done enough to ensure that these funds are paid out.

The *Bottom Line* was accompanied by a booklet, *Look Beyond the Bottom Line*, which tells the stories of pensioners and other beneficiaries from the Unpaid Benefits Campaign and the Cape Town Ex-Mineworkers Forum. Their stories highlight how an unscrupulous industry – including former employers, fund trustees and fund administrators – has dragged them from pillar to post with little consideration for their plight. ***Full Report:https://www.dailymaverick.co.za/article/2020-06-16-countless-south-africans-are-owed-pension-benefits-and-yet-claiming-is-a-constant-battle/#gsc.tab=0***

Daily Maverick | 16 June 2020

SA won’t join collective talks to suspend African debt

Complex issue because ‘bulk of the debt is held by South African pension funds’ – Trevor Manuel. South Africa won’t join collective negotiations with creditors to suspend or write off African nations’ debt, an envoy for the country told the Sunday Times newspaper. Trevor Manuel, a special envoy to the African Union, said his country’s position is complex because most of its debt is held locally. Some African governments are pushing for a moratorium to repay international creditors after coronavirus-induced lockdowns damaged their economies.

“The bulk of the debt is actually held by South African pension funds,” the former finance minister said. “Once you enter into these kinds of agreements you might actually be compelled to say to South African pension funds, we are sorry but [we] can’t deal with your pensions.”
Institutions including the World Bank and International Monetary Fund have indicated they would negotiate with each country individually and not as a bloc, he said.

The World Bank warned in April that sub-Saharan Africa will suffer its first recession in 25 years, with gross domestic product in the region probably shrinking between 2.1% and 5.1% in 2020. South African President Cyril Ramaphosa said in late May that the continent could get more than $200 billion in additional support after the United Nations called for a global response package for the virus.

Moneyweb | 14 June 2020

INTERNATIONAL NEWS

Pensions triple lock at risk because of fallout from Covid-19

Rishi Sunak is preparing to break the Conservative party’s “triple lock” state pension pledge, amid Treasury fears that the policy could soon become unaffordable because of the fallout from the coronavirus crisis. The UK chancellor’s willingness to break a 2019 Tory manifesto commitment is a sign of how the Covid-19 pandemic is forcing the government to confront political taboos. Mr. Sunak has been warned that unless he breaks the pledge next year, the value of the state pension could rise sharply.

The triple lock ensures the state pension goes up by whichever is higher — wages, inflation or 2.5 per cent. The Treasury has noted with alarm official forecasts that wages could soar in 2021 as they rebound from an artificial dip caused by the government’s job retention scheme. Some 9m people currently receive only 80 per cent of their wages under the furlough scheme. While April 2021 pension payments would not be hit by this year’s dip in wages — because of the 2.5 per cent minimum annual increase — the Treasury would find itself paying very large increases to pensioners the following year, based on an expected sharp recovery of wages when the furlough scheme ends. Forecasts of big swings in average earnings have persuaded some inside the Treasury that the triple lock needs to be suspended for at least two years: calculations for setting the rise in state pensions for April 2022 are based on average wage rises in the calendar year to September 2021. But prime minister Boris Johnson has told Mr Sunak that any new formula for upgrading the state pension should include safeguards for pensioners, according to officials close to the talks.

Number 10 and the Treasury said in a joint statement: “Announcements on tax and pensions policy are for Budgets. The government is committed to supporting pensioners.” Paul Johnson, director of the Institute for Fiscal Studies, said the government should announce a suspension of the triple lock soon. “Earnings next year compared with 2020 could well go up enormously if lots of people move from 80 per cent pay on furlough to 100 per cent of pay or lots of low-paid jobs disappear”.

Torsten Bell, director of the Resolution Foundation, said it was “inevitable” the Treasury would have to suspend the triple lock scheme and set pension rate increases for the next two years. The Treasury has long wanted to ditch the policy in the face of an ageing society with a rapid rise in the number of pensioners over the next two decades. In the Office for Budget Responsibility’s 2018 fiscal sustainability report, the fiscal watchdog said the long-term cost of the triple lock would be 1 per cent of national income a year by 2068, which equates to £20bn a year in today’s prices.

The expected breaking of the triple lock, which was introduced by David Cameron’s coalition government in 2010, would start a big debate about whether it is affordable in the long run. The Covid-19 outbreak has raised questions about intergenerational fairness as young people see their studies or livelihoods disrupted to protect more vulnerable older people. Last month a confidential assessment of the coronavirus crisis by Treasury officials estimated that it would cost the exchequer almost £300bn this year.

Although Mr. Sunak is confident Britain can continue to service that debt at low rates of interest, he is also looking for ways to put the country’s public finances on a sounder footing. Covid-19 has provided the Treasury with a chance to reassess politically popular but highly constrictive policies, including the pensions triple lock and the separate Tory promise not to increase rates of income tax, national insurance and VAT. Last month Mr. Johnson, asked at the Commons liaison committee whether he would continue to honour the pensions triple lock, responded: “We are going to meet all of our manifesto commitments. Unless I specifically tell you otherwise.”

Financial Times | 17 June 2020

Pension insurance deals boost UK company shares by up to 3%, says report

LONDON (Reuters) - Most London-listed companies that transferred pension obligations to insurance companies saw their share prices rise by up to 3% more than sector peers in the six months after completing the deals, a report showed on Wednesday. Two-thirds of the more than 70 firms which transferred part or all of their defined benefit pension schemes to an insurer since 2007 saw a share price lift afterwards, the report by consultants Mercer said. Pension payments in a defined benefit scheme are based on an employee's final salary before retirement.

The share price rise ranged from 0.25-3% and tended to increase over the six-month period, the report showed. "Defined benefit plans in some cases can be a drag on a company, to remove some of those elements is probably a positive," said David Ellis, UK head of bulk pensions insurance at Mercer. The deals surveyed by Mercer totalled 90 billion pounds ($114 billion) and 48 were for companies in the FTSE 100 .FTSE index. Two-thirds of Britain's company pension schemes are in deficit, following years of low interest rates which have slashed their investment income.

So-called bulk annuity deals enable companies to rid their balance sheets of the pension funds, which can be a deterrent to merger activity, but many companies cannot afford them.
Bulk annuity deals hit a record volume of 44 billion pounds last year, though 2020 is expected to be slower. Legal & General (LGEN.L), one of the biggest players in the market, said on Tuesday it expected to have completed 3.4 billion pounds in deals by the end of June and was quoting on a pipeline totalling a further 25 billion pounds.

Reuters | 17 June 2020

OUT OF INTEREST

Taxpayer's right to be notified is a matter of administrative justice

The High Court in Pretoria recently ruled that taxpayers have a right to be notified before SARS appoints an agent to collect 'outstanding tax debt'. ALTHEA SOOBYAH, Tax Consulting Director at Mazars explains why this is a victory for both taxpayer rights and the wider cause of administrative justice. SARS can collect outstanding tax debts using several methods, but each has specific procedures that must be followed to ensure due process, especially when a third party is involved.

A recent High Court judgment [2] confirmed this, and in doing so, also confirmed the administrative justice principle of providing sufficient notice to the taxpayer prior to appointing an agent for the collecting of outstanding debt. The high cost of litigation often deters taxpayers who want to take action against SARS to recover their funds, but courts are less likely to overlook legal process and rights of the taxpayer in situations where proper processes are not followed. In this judgment, the High Court ordered the Commissioner to repay the monies to the taxpayer together, with interest as well as the costs of litigation. This case is a perfect example where rights of the taxpayer prevailed over the powers conferred upon the Commissioner.

What the Tax Administration Act (TAA) says

Section 179 of the TAA allows the SARS Commissioner to appoint a third party to hold money on behalf of a taxpayer, and to pay such monies over to SARS in respect of outstanding tax debt. This third party is often the bank with which the taxpayer banks. However, S179 also requires that the Commissioner takes certain steps before appointing this third party as a collection agent, including notifying a taxpayer that they have an outstanding tax debt, and that further steps will be taken should the tax debt remain outstanding. This protocol is aligned to the Promotion of Administrative Justice Act, which requires that a public entity notify any person of their intention to take a decision that has an adverse material external effect on the person's rights, such as the decision to appoint a third party as a collecting agent for outstanding tax debt.

A key requirement is that the debt must be outstanding. Importantly, any notice served to a taxpayer by the Commissioner before expiry of the aforementioned date does not qualify as a 'notice' in terms of S179 of the TAA. The Commissioner therefore cannot invoke this section's provisions against any third party who holds monies or assets on behalf of the taxpayer to collect on a tax debt.

The case at hand: SIP Project Managers vs SARS Commissioner [3]

A recent High Court ruling in the case of SIP Project Managers vs SARS Commissioner dealt with this issue in detail. In this case, an official in SARS' debt management team issued a letter notifying the taxpayer that there was debt on their account, which fell due at the end of November. The letter was issued before the expiry date for payment specified in the assessment notice.

The Counsel representing SARS in this matter relied on this notice as evidence that the taxpayer had been notified that SARS would be appointing the bank as an agent. The High Court had to decide whether that notice (issued prior to the due date) constituted notice in terms of S179 of the TAA, and whether such notice was sufficient to entitle SARS to appoint the bank as an agent to collect on the deemed outstanding tax debt. Ultimately, the Court ruled against the Commissioner, stating –

"…the respondent may only use the method in sec 179 to obtain payment through a third party if it complies with the requirements of the section. The wording of section 179(5) is unambiguous and clear – the notice to a third party "may only be issued after delivery of a final demand for payment which must be delivered at least 10 business days before the issue of the notice…" This is a peremptory requirement before the step can be taken to issue a third-party notice for the recovery of an outstanding tax debt."

The High Court acknowledged that the debt remained outstanding and the process would have to be initiated from the beginning if an order was granted that SARS should repay the monies collected from the bank account of the taxpayer. However, it also highlighted the purpose of S179 (5), which required notification was introduced to limit the powers of SARS in recovering outstanding tax debts. To ignore the provisions of S179 (5) for the sake of process would be condoning an unlawful process and render the provision superfluous. This decision reinforces that before SARS can make use of a third party as agent to collect monies [4]:

1. There must be a tax debt;
2. The due date for payment of the tax debt must have expired;
3. A letter of demand must be delivered to the taxpayer at least 10 days prior to issuing a notice to a third party who holds monies for and on behalf of the taxpayer concerned;
4. The letter of demand delivered to the taxpayer must set out the recovery steps to be taken should the tax debt not be paid; and
5. The letter of demand must also specify the relief mechanisms available to the taxpayer.

The Commissioner is therefore obliged to notify the taxpayer of its intention to use collection methods (such as appointing an agent) before making use of such provisions.

Another important point to note from the judgment is that the letter of demand must be delivered to the taxpayer (via electronic platform or to the last known address of the taxpayer). A notice generated by the eFiling system does not satisfy the requirement of delivery unless such notice is uploaded on to taxpayer's profile.

[1] SIP Project Managers (Pty) Ltd v Commissioner for the South African Revenue Service, case number 11521/2020.

[2] SIP Project Managers (Pty) Ltd v Commissioner for the South African Revenue Service, case number 11521/2020.

[3] SIP Project Managers (Pty) Ltd v Commissioner for the South African Revenue Service, case number 11521/2020.

[4] The only exception to the rule would occur in the event that a senior SARS official is satisfied that such notification will prejudice the collection of the tax debt. However, this exception is subject the SARS official concerned proving that such prejudice existed at the time such decision was taken.

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