



CONSULTATION REPORT

FSCA DRAFT INTERPRETATION RULING 1 OF 2024 (RF)

INTERPRETATION RULING: INTERPRETATION AND APPLICATION OF SECTION 37C OF THE PENSION FUNDS ACT, 1956

March 2024

1. General account of the public consultation process and issues raised

On 25 March 2020 the Authority published FSCA Interpretation Ruling 1 of 2020(RF) ("IR 1 of 2020"). The publication of IR 1 of 2020 followed from an extensive public consultation process. Earlier in 2023 it was brought to the attention of the Authority that paragraph 4 of the ruling relevant to the payment of unclaimed benefits was incorrectly interpreted.

The Authority subsequently reviewed the interpretation ruling in order to correct the errors in interpretation pointed out and a revised draft Interpretation Ruling was published on 14 August 2023 for public consultation, with comments due on 26 September 2023. The Authority will withdraw and replace interpretation IR 1 of 2020 with the new FSCA Interpretation Ruling [-] of 2024(RF) ("draft IR").

Following the consultation process the Authority received written comments from a total of 4 industry commentators, supplemented by additional input through individual engagement with interested parties. No significant concerns were raised needing substantial change to the draft IR. The only comment that prompted a minor change is a request that it be made clear that Section 37C of the Pension Funds Act does not apply to unclaimed benefits held by unclaimed benefit funds. This was added in paragraph 4.5 of the Interpretation Ruling.

Responses to each comment received are set out in the table below.

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SECTION A - LIST OF COMMENTATORS

No	Name of Organisation	Acronym
1	Batseta Council of Retirement Funds for South Africa	BATSETA
2	Institute of Retirement Funds Africa	IRFA
3	Old Mutual (Old Mutual Life Assurance Company (SA), Old Mutual Investment Administrators, SUPERFUND, South African Retirement Annuity Fund, Old Mutual Wealth Funds).	OLD MUTUAL
4	Office of the Pension Funds Adjudicator	OPFA

SECTION B - COMMENTS ON THE DRAFT INTERPRETATION RULING

No	Commentator	Paragraph number / Definition	Issue / Comment / Recommendation	Authority Response
1. PURPOSE OF THE INTERPRETATION RULING				
1.	IRFA		The IRFA welcomes the amendments to the Interpretation Note 1 of 2000, which provides further clarity on the treatment of unclaimed benefits.	Noted.
2. DEFINITIONS				
2.	BATSETA	Add: "Originating fund"	means the retirement fund (whether occupational, preservation or retirement annuity) from which an unclaimed benefit is transferred	Please see response to item 4 below where we indicate that the proposed wording, which amongst other things refer to "originating fund", has not been accepted. As such, the term "originating fund" will not be used in the Interpretation Ruling and this definition is therefore not necessary.
3.	IRFA	Add: "Originating fund"	means the retirement fund (whether occupational, preservation or retirement annuity) from which an unclaimed benefit is transferred	Please see the response directly above.
3. BACKGROUND				
			<i>No comments received.</i>	
4. INTERPRETATION AND APPLICATION OF SECTION 37C OF THE ACT				
4.	BATSETA	4.5	Add after this as separate paragraphs:	

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			<p>(a) The nature of an unclaimed benefit does not change when it is transferred to an unclaimed benefit fund. Although the Income Tax Act states that in an unclaimed benefit fund the person to whom an unclaimed benefit is due is a member, the nature of the unclaimed benefit – that it is due and payable – does not change as a result of the transfer to the unclaimed benefit fund.</p> <p>(b) Accordingly, if it is ascertained that the person entitled to an unclaimed benefit held by an unclaimed benefit fund has died, that unclaimed benefit is payable to his or her estate. The process set out in section 37C does not apply. Where that person died before the transfer from the originating fund to the unclaimed benefit fund, the Authority does not require the unclaimed benefit to be transferred back to the originating fund; the unclaimed benefit fund can simply pay it to the estate of that person.</p> <p>(c) In the rare situation that in an originating fund a benefit was categorised as an unclaimed benefit because a member was considered to have absconded from service when in fact his or her service had terminated by death, the view of the Authority is that if this benefit was transferred to an unclaimed benefit fund in the bona fide belief that it was an unclaimed benefit then, because at least 24 months would have elapsed since it was so categorised in the originating fund, the 12 month period stipulated in section 37C must also have elapsed with the consequence that such a benefit becomes payable to the estate of that person in terms of section 37C(1)(c). The section 37C process is therefore not required in this situation.</p>	<p>(a) Agree in principle. See revision to paragraph 4.5. The proposed insertion referencing the Income Tax Act is not accepted, as the 'owner' of an unclaimed benefit is a member of an unclaimed benefit fund, but s37C does not apply if the benefit has already vested as explained in paragraph 4.6.</p> <p>(b) Agree in principle. Please see revision to new paragraph 4.6.and paragraph 4.8.</p> <p>(c) The Authority does not agree. An abscondment from service for an extended period of time necessarily results in the termination of employment, subject to the employment contract or applicable legislation, in which event the member becomes a paid-up member in terms of Regulation 38(1). Accordingly, it would be an error to categorise the member's benefit as unclaimed in the first place, even if the fund is correct about his or her abscondment. (see para 4.6 of IR)</p>

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				Therefore, the Authority's view is that the scenario described in the comment should not arise.
5.	IRFA	4.5	<p>Add after this as separate paragraphs:</p> <p>a) The nature of an unclaimed benefit does not change when it is transferred to an unclaimed benefit fund. Although the Income Tax Act states that in an unclaimed benefit fund the person to whom an unclaimed benefit is due is a member, the nature of the unclaimed benefit – that it is due and payable – does not change as a result of the transfer to the unclaimed benefit fund.</p> <p>b) Accordingly, if it is ascertained that the person entitled to an unclaimed benefit held by an unclaimed benefit fund has died, that unclaimed benefit is payable to his or her estate. The process set out in section 37C does not apply. Where that person died before the transfer from the originating fund to the unclaimed benefit fund, the Authority does not require the unclaimed benefit to be transferred back to the originating fund; the unclaimed benefit fund can simply pay it to the estate of that person.</p> <p>c) In the rare situation that in an originating fund a benefit was categorised as an unclaimed benefit because a member was considered to have absconded from service when in fact his or her service had terminated by death, the view of the Authority is that if this benefit was transferred to an unclaimed benefit fund in the bona fide belief that it was an unclaimed benefit then, because at least 24 months would have elapsed since it was so categorised in the originating fund, the 12 month period stipulated in section 37C must also have elapsed with the</p>	Please see the response directly above.

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			consequence that such a benefit becomes payable to the estate of that person in terms of section 37C(1)(c). The section 37C process is therefore not required in this situation.	
5. EFFECTIVE DATE				
6.	IRFA		a) If the interpretation was incorrect all along what is the effect of the effective date in the Interpretation Ruling?	The effective date of the new Interpretation Ruling will be the date of publication of the final Interpretation Ruling. It will replace Interpretation Ruling 1 of 2020, which will be withdrawn.

SECTION C- GENERAL COMMENTS

No	Commentator	Comment/Recommendation	Response
1.	IRFA	<p>a) What implications do retirement funds face when an inaccurate interpretation of the law, which they have adhered to, is issued? Does this suggest that administrators of the estates of deceased unclaimed members should explore the possibility of rectifying the disbursement of death benefits, directing them to the estate as required by law, even if their existing fund rules indicate otherwise?</p> <p>b) Retirement funds do not currently see a necessity for rule amendments, unless a specific fund has explicitly outlined in its rules that unclaimed benefits must be managed in accordance with section 37C. Is the FSCA considering prioritizing the timely revision of applicable fund rules in this context?</p>	<p>a) The Authority will not be prescriptive as to whether and how disbursements should be rectified. We recommend that each fund consider this on a case-by-case basis. Note that retirement funds will not face any adverse implication for adherence to IR 1 of 2020 while it was in effect.</p> <p>b) Where a fund has explicitly outlined in its rules that unclaimed benefits must be managed in accordance with section 37C, the fund will need to apply to the Authority for a rule amendment. These applications will be dealt with in accordance with the FSCA procedures, and on a case-by-case basis.</p>

No	Commentator	Comment/Recommendation	Response
2.	OLD MUTUAL	We are aligned with the content of the draft and have no comments for this submission.	Noted.
3.	OPFA	The Office of the Pension Funds Adjudicator (OPFA) supports the interpretation that an unclaimed benefit is not subject to section 37C. Accordingly, the OPFA supports the draft Interpretation Ruling.	Noted.