



FSCA INTERPRETATION RULING 1 OF 2024

BACKGROUND

On 25 March 2020, the FSCA issued Interpretation Ruling 1 of 2020, which replaced Information Circular PF no. 2 of 2010. The FSCA was alerted that certain aspects of that ruling required revision, since it incorrectly brought an unclaimed benefit within the ambit of section 37C of the Pension Funds Act (PFA).

Interpretation Ruling 1 of 2024 was issued to provide clarity, consistency and certainty in the interpretation and application of section 37C of the PFA. It revokes and replaces FSCA Interpretation Ruling 1 of 2020.

The 2024 Interpretation Ruling explains the distinction between a benefit becoming payable upon the death of a member, in which case section 37C will apply, as opposed to a benefit that has already become payable before the member's death. The latter benefit falls outside the ambit of section 37C, even if the benefit has not yet been paid to the member upon his or her death.

SECTION 37C OF THE PFA

Section 37C(1) of the PFA provides that:

“Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner...”

This section therefore provides that benefits payable because of the death of a member do not form part of the member's estate and sets out how the benefit payable upon the death of a member must be dealt with.

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The key distinction is the cause of the vesting of the benefit.

- Where the death of the member is the cause for the benefit to become payable, section 37C will apply.
- On the other hand, if a member has become entitled to claim a benefit and if the fund received a written instruction from the member to pay out or transfer the benefit before the member's death, then it is that written instruction that caused the benefit to be payable (not the death of the member). This applies if a member, before his death, instructed the fund in writing to pay or transfer the benefit. In such cases, the written instruction, and not the member's death, triggers the payment of the benefit, therefore making section 37C inapplicable.

UNCLAIMED BENEFITS

Paragraph 4.6 of the Interpretation Ruling provides that:

“The unclaimed benefit is not due and payable because of the death of a member, and accordingly section 37C will not be applicable when that member dies. Where the person entitled to an unclaimed benefit dies, the benefit, which has vested in that person, must be paid to that person's estate and must not be dealt with in terms of section 37C.”

Unclaimed benefits are owed to the member, as the benefit has become due and payable to that person. Even when transferred to an unclaimed benefit fund, the nature of the unclaimed benefit does not alter. If the entitled individual is traced, the benefit must be paid to him/her.

An unclaimed benefit is not due and payable because of the death of a member, and section 37C will not be applicable when that member dies. Where the person entitled to an unclaimed benefit dies, the benefit, which has vested in that person, must be paid to that person's estate and must not be dealt with in terms of section 37C.

Similarly, where an unclaimed benefit arose from a death benefit distributed in terms of section 37C, this section does not apply upon the death of that beneficiary who is entitled to that undistributed death benefit in an unclaimed benefit fund. Such an unclaimed benefit vested in the beneficiary and must be paid to the beneficiary's deceased estate.

Although the person entitled to the benefit is a member of the unclaimed benefit fund, it is not their death that makes the benefit payable, and the wording in section 37C “payable upon the death of a member” does not apply.

PAID-UP MEMBERS AND DEFERRED RETIREES

Paid-up members and deferred retirees are, in terms of the PFA, both considered members. If paid-up members or deferred retirees instruct the fund to pay or transfer their benefit, or to treat it as a retirement benefit, the benefit becomes payable. If paid-up members or deferred retirees pass away after giving such instruction to the fund but before the benefit is processed accordingly, it must be paid to their estates.

APPLICATION OF THE INTERPRETATION RULING

Interpretation Ruling 1 of 2024 is applicable from date of publication, which is 4 March 2024. All claims already in progress at this date will have to be reviewed so that they comply with the provisions of the Interpretation Ruling.