

7 April 2011

## **LEGAL UPDATE 4/2011: Board Notice 61 of 2011 – Valuation exemption**

Board Notice 61 of 2011, which deals with valuation exemption, was promulgated in Government Gazette No. 34152 on 25 March 2011. It sets out the procedural and administrative requirements for applications by funds, for exemptions from provisions of sections 9A and 16 of the Pension Funds Act.

The Board Notice applies to all applications for valuation exemptions submitted to the Registrar on or after 1 April 2011. Valuation exemptions issued at date of the Board Notice will continue to be in force until the expiry date of the exemption.

This document deals with the aspects of the Board Notice that are of importance to the FundsAtWork umbrella and preservation funds.

### **Format and submission**

The following must be included in the application for valuation exemption:

- A signed statement by the trustees of the fund in the prescribed format; and
- The completed certificate by the valuator of the fund in the format prescribed, from the date that the valuation certificate is required, which must be the same date as the fund's financial year end.

### **Conditions for valuation exemption**

A fund will be valuation exempt if it complies with the following:

- All members of the fund, other than pensioners, belong to defined contribution categories of the fund. All members of the FundsAtWork umbrella funds, which are defined contribution funds, contribute to the fund at a rate defined in the special rules of each participating employer.
- If a member's benefit that is paid exceeds the member's individual account balance, the excess must be fully insured. The FundsAtWork umbrella and preservation funds are underwritten funds and the members of these funds are paid what is in their retirement savings accounts. These benefits are fully underwritten by Momentum as the insurer.
- If the fund has a contingency reserve account, the reserve account can never have a negative balance. This does not apply to a processing reserve account.

The rules of the FundsAtWork umbrella funds provide for a processing error reserve account. The FundsAtWork preservation funds do not have any reserve accounts.

FundsAtWork umbrella and preservation funds don't have investment reserve accounts.

FundsAtWork umbrella funds: rule 5.16 allows for a reserve account to be set up in the special rules for a participating employer. In light of the conditions for valuation exemption, the trustees will not allow participating employers to establish investment reserve accounts.

### **Funds eligible to be considered for valuation exemption**

Funds have to comply with the following two additional criteria.

The fund has either had a surplus apportionment scheme approved, a nil scheme has been noted or the fund is not required to make a submission.

For the FundsAtWork umbrella funds, a number of nil returns were submitted and noted by the Registrar for those employers that were participating employers at the surplus apportionment date. Others were only submitted last year. There is only one participating employer under the FundsAtWork Umbrella Provident Fund with distributable surplus at the moment.

For the FundsAtWork preservation funds and based on the 2009 financials, a nil return was noted by the Registrar on 10 July 2008.

Unless the fund has previously been exempted from valuation after its surplus apportionment date, the statutory actuarial valuation following such valuation at its surplus apportionment date, has been accepted by the Registrar.

- The surplus apportionment date for the FundsAtWork umbrella funds was 30 June 2004. This was also the date at which the first valuation was due.
- For the FundsAtWork Umbrella Pension Fund, the valuation report for the three years ended June 2007 is still with the Registrar.
- The FundsAtWork Umbrella Provident Fund's report for the same period has been accepted by the Registrar.
- For the FundsAtWork preservation funds, the FSB approved valuation exemptions will expire on 30 June 2013.

### **Withdrawal of valuation exemption**

A valuation exemption that has been granted will remain valid until it is explicitly withdrawn by the Registrar.

The trustees of the fund must notify the Registrar –:

- if the fund at any time fails to comply with the conditions for valuation exemption (paragraph 3 of the Notice); or
- if any person acting in an advisory capacity is of the opinion that the fund no longer complies with the conditions; or
- if the fund submits a rule amendment that would cause the fund to no longer qualify for valuation exemption.

The consequence of the withdrawal is that the valuation exemption granted to a fund is invalid. A valuator must be appointed within 90 days of the date of withdrawal (section 9A of the Pension Funds Act) and the fund must submit an actuarial valuation report at the fund's financial year end following the date of withdrawal.

#### **Current valuation exemption certificates**

FundsAtWork Umbrella Pension and Provident Funds: The Registrar is still considering the 2007 valuation reports. The valuation reports for the three years ending June 2010 are not yet due for submission. We will be applying for exemption after the 2010 reports have been submitted and approved.

FundsAtWork Pension Preservation and Provident Funds: The current valuation exemption for both preservation funds expires on 30 June 2013. The exemption may be extended if the certificate is submitted on or before 30 June 2014. After that an application may be made in terms of the current notice.

Anthea Mara and Virgo Abrahams  
Legal Adviser and Compliance Officer  
Momentum BenefitsAtWork

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