

INTERPRETATION NOTE 99

DATE: 21 February 2018

ACT : INCOME TAX ACT 58 OF 1962
SECTION : PARAGRAPH 4(1) OF THE SECOND SCHEDULE
SUBJECT : UNCLAIMED BENEFITS

Preamble

In this Note unless the context indicates otherwise –

- “**fund**” means a “pension fund”, “provident fund”, “pension preservation fund”, “provident preservation fund” and “retirement annuity fund” as defined in section 1(1) of the Income Tax Act;¹
- “**Income Tax Act**” means the Income Tax Act 58 of 1962;
- “**paragraph**” means a paragraph of the Second Schedule to the Income Tax Act;
- “**Pension Funds Act**” means the Pension Funds Act 24 of 1956;
- “**Schedule**” means a Schedule to the Income Tax Act;
- “**section**” means a section of the Income Tax Act; and
- any other word or expression bears the meaning ascribed to it in the Income Tax Act.

1. Purpose

This Note explains the treatment of lump sum benefits classified as unclaimed benefits that accrued to members (both before and from 1 March 2009) for income tax purposes.

General Note 35 dated 8 April 2004 is hereby withdrawn.

2. Background

Historically some members of a fund did not, after exiting the fund, claim the lump sum benefit² to which they became entitled in terms of the rules of the fund. These lump sum benefits were classified as an “unclaimed benefit” if it was not claimed after a reasonable period of time (see **4.1**). The legislation did not regulate when and how a lump sum benefit should be classified as an “unclaimed benefit”. Fund administrators, as a result, applied different rules to determine when a lump sum benefit was classified as an “unclaimed benefit”.

¹ The definitions of “pension preservation fund” and “provident preservation fund” were introduced into the Income Tax Act with effect from 1 January 2009.

² As defined in the section 1(1) read with the Second Schedule.

In many instances, fund administrators only applied for a tax directive for an unclaimed benefit when the member or the member's beneficiaries claimed the unclaimed benefit, as opposed to when the lump sum benefit accrued.

3. The law

The relevant provisions of the law are quoted in the **Annexure**.

4. Application of the law

4.1 What is an unclaimed benefit?

An unclaimed benefit is a lump sum benefit³ that the member of a fund failed to claim within a reasonable period of time after the lump sum benefit accrued. A reasonable period was six months from the date of accrual of the benefit (that is, up to six months from the day after resignation or termination of employment or retirement, or up to six months from the day before death). The insertion of the definition of "unclaimed benefit" into the Pension Funds Act⁴ introduced a period of 24 months before a lump sum benefit is classified as an unclaimed benefit.

The above amendment to the Pension Funds Act does not have an impact on the date of accrual of the unclaimed benefit. It merely extends the period for a benefit to be classified as an "unclaimed benefit".

4.2 Position before 1 March 2009

A lump sum benefit was deemed to have accrued to a member on the date that he or she became entitled to claim a lump sum benefit in terms of the registered rules of the fund. The rules of most funds confirmed that a member became unconditionally entitled to claim a lump sum benefit on the day of his or her resignation, dismissal, retrenchment or retirement from employment or on death.⁵ The accrual of the amount was determined by the fact that the member became unconditionally entitled to the lump sum benefit and not whether the lump sum benefit was claimed.⁶

The fact that a member did not complete administrative requirements for his or her claim, or the fact that the administrator was unable to trace the member, or unable to determine whether or not the member would need to exercise some option for the payment of the lump sum benefit did not affect that member's unconditional right to claim the benefit.

Similarly, the fact that a member had a right to transfer the lump sum benefit to another fund on resignation, or to choose to commute a portion of the lump sum benefit on retirement and failed to exercise that right, does not affect the fact that the full amount of the lump sum benefit accrued on the member's resignation date or retirement date for income tax purposes.

³ "Lump sum benefit" as defined in section 1(1) excludes any portion of the benefit, payable as a result of the member's retirement from the fund, used to purchase an annuity.

⁴ Effective from 1 September 2008.

⁵ Paragraph 4(1) before being amended by the Taxation Laws Amendment Act 7 of 2010.

⁶ *Lategan v CIR* 1926 CPD 203, 2 SATC 16.

In the case of a death benefit, the lump sum benefit was deemed for income tax purposes to accrue to the deceased member the day before his or her death.⁷ The payment of these benefits is regulated by the provisions of section 37C of the Pension Funds Act. The definition of “unclaimed benefit” in the Pension Funds Act, inserted with effect from 1 September 2008, excludes any lump sum benefit payable, as a result of death, and not paid to beneficiaries within 24 months of the fund becoming aware of the death of the member. The fact that the lump sum benefit cannot be classified as an “unclaimed benefit” under the Pension Funds Act does not affect the accrual of the lump sum benefit for tax purposes. Any subsequent tracing of or payment to the deceased member’s beneficiaries does not create a further accrual event.

In 2003, SARS requested all funds to submit a list of all lump sum benefits not claimed within the reasonable period in order to determine the tax payable on these unclaimed benefits. In most instances the information submitted to SARS did not stipulate the exit event that gave rise to the accrual of the benefit (for example resignation or retirement). These unclaimed benefits were taxed as withdrawal benefits at a rate of between 18% and 30%. The fund was required to issue a corresponding IRP5 tax certificate for the member of the fund.

Any interest that accrued on the value of the unclaimed benefit, after the date of accrual, had to be treated as interest for income tax purposes. The fund or fund administrator was obliged to issue an IT3(b) tax certificate in respect of the interest amount that accrued in each year of assessment.

Example 1 – Unclaimed benefit taxed during the 2003-project

Facts:

On 1 December 2001 a lump sum benefit of R103 500 accrued to X under the rules of ABC Retirement Fund. The benefit was not claimed by the member and was taxed at a rate of 21% during the 2003-project. The value of the unclaimed benefit after tax was R81 765. The fund was required to issue an IRP5 tax certificate for the member reflecting the original lump sum benefit of R103 500 and employees’ tax of R21 735 deducted. In addition, IT3(b) tax certificates were issued for the member for each year of assessment that interest accrued.

X approached the fund on 1 April 2015 to claim the benefit. Interest to the value of R68 000 accrued on the benefit from 1 December 2001 until 1 April 2015. The average tax rate⁸ for X was 21%.

⁷ Paragraph 4(1) before being amended by the Taxation Laws Amendment Act 7 of 2010.

⁸ Section 5(10). The special tax rate table applicable to retirement fund lump sum benefits was introduced in 2007 and was applicable to those benefits that accrued on or after 1 October 2007. The special tax rate table in respect of retirement fund lump sum withdrawal benefits was only introduced in 2009 and was only applicable to retirement fund lump sum withdrawal benefits that accrued on and after 1 March 2009.

Result:

The following steps must be followed by the fund administrator in order to determine the tax payable on the benefit claimed by X on 1 April 2015:

Step 1: Apply for a tax directive

A tax directive must be applied for on the total value of the unclaimed benefit (R103 500). The reason on the tax directive application must reflect the reason for exit from the employer's employment as "resignation".⁹

The interest accrued to or payable to the member does not form part of the unclaimed benefit and only the original value of R103 500 must be reflected as the "gross lump sum amount" on the tax directive application.

	R
Lump sum benefit as at 1 December 2001 (date of accrual)	103 500
Less: Tax at average rate per the tax directive (21%)	<u>(21 735)</u>
Lump sum benefit after tax was deducted	81 765

Step 2: Issue an IT3(a) tax certificate

An IT3(a) tax certificate must be issued to the member reflecting the original value of the unclaimed benefit (R103 500). An IT3(a) tax certificate has to be issued (as opposed to an IRP5 tax certificate) as no additional employees' tax is payable.

The information on the IT3(a) tax certificate relating to the tax directive application must include the tax directive number as well as the following:

<u>Source code</u>	<u>Amount</u>
3902	R103 500

Code 04 must be inserted in the "Reason for Non-Deduction of Employees' Tax" field (4150).

The transaction year must be reflected as 2016 and the year of assessment as 2002.

Step 3: Issue IT3(b) tax certificates

IT3(b) tax certificates must be issued for the interest that accrued on the lump sum for each year of assessment since the accrual of the lump sum. These certificates must be provided to SARS via an IT3(b) submission on an annual basis.

The net lump sum benefit of R81 765 (R103 500 – R21 735) plus the interest indicated on the IT3(b) tax certificates are payable to the member.

The following documents must be provided to the member:

- IRP5 tax certificate issued during the 2003-project;
- IT3(a) tax certificate issued in 2016; and
- IT3(b) tax certificates reflecting the interest that accrued for each year of assessment.

⁹ Paragraph 9(3) of the Fourth Schedule.

If the tax payable reflected on the tax directive is more than the tax deducted during the 2003-project, the difference has to be paid to SARS. An IRP5 tax certificate reflecting the original unclaimed benefit amount and any additional employees' tax paid must be provided to SARS.

A benefit that is classified as an "unclaimed benefit" is subject to tax. This places an obligation on the fund to apply for a tax directive using the reason "unclaimed benefit".¹⁰ A retirement fund lump sum withdrawal benefit¹¹ that accrued before 1 March 2009 was taxed at the member's average rate, however, if the member's tax affairs were not in order, the benefit was taxed at a rate of 40%. Retirement fund lump sum benefits are taxed in accordance with the special tax rate table with effect from 1 October 2007.¹²

Example 2 – Unclaimed benefit that accrued after the 2003-project and complied with the legislative requirements

Facts:

On 1 January 2006 a lump sum benefit of R208 400 accrued to X as a result of resignation under the rules of ABC Retirement Fund. The benefit was not claimed by the member on resignation. The lump sum benefit was classified as an "unclaimed benefit" on 1 August 2006. The fund applied for a tax directive with the reason indicated as "unclaimed benefit". The average tax rate for X was 21%. Employees' tax of R43 764 was deducted from the unclaimed benefit. IT3(b) tax certificates were issued for each year of assessment that interest accrued.

X approached the fund on 1 June 2015 to claim the benefit. The unclaimed benefit accrued interest of R80 000 from 1 January 2006 until 1 June 2015. The average tax rate for X was in fact 23% and not 21%, based on additional information available on the SARS system.

Result:

The following steps must be followed by the fund administrator when the benefit is claimed:

Step 1: Apply for a tax directive

A tax directive must be applied for on the total value of the unclaimed benefit (R208 400). The reason on the tax directive application must reflect the reason for exit from the employer's employment as "resignation".

The interest accrued to or payable to the member does not form part of the unclaimed benefit and only the original value of R208 400 must be reflected as the "gross lump sum amount" on the tax directive application.

¹⁰ Paragraph 9(3) of the Fourth Schedule.

¹¹ Definition of "retirement fund lump sum withdrawal benefit" inserted by the Taxation Laws Amendment Act 3 of 2008 with effect from 1 March 2009. Previously referred to as a "withdrawal benefit".

¹² Section 5(10). The special tax rate table applicable to retirement fund lump sum benefits was introduced in 2007 and was applicable to those benefits that accrued on or after 1 October 2007. The special tax rate table in respect of retirement fund lump sum withdrawal benefits was only introduced in 2009 and were only applicable to retirement fund lump sum withdrawal benefits that accrued on and after 1 March 2009.

	R
Lump sum benefit as at 1 January 2006 (date of accrual)	208 400
Less: Tax at average rate ¹² as per the tax directive (23%)	<u>(47 932)</u>
Lump sum benefit after tax was deducted	160 468
 <i>Step 2: Determine whether any additional tax is payable</i>	
Tax as per tax directive (step 1)	47 932
Less: Tax already paid on unclaimed benefit	<u>(43 764)</u>
Tax payable	4 168
 The information on the IRP5 tax certificate relating to the directive application must include the tax directive number as well as the following:	
<u>Source code</u>	<u>Amount</u>
3902	R208 400
4102	R4 168
 The transaction year must be reflected as 2016 and the year of assessment as 2006.	
 <i>Step 3: Issue IT3(b) tax certificates</i>	
IT3(b) tax certificates must be issued for the interest that accrued on the lump sum for each year of assessment since the accrual of the lump sum benefit. These certificates must be provided to SARS via an IT3(b) submission on an annual basis.	
The net lump sum benefit of R160 468 (R208 400 – R47 932) plus the interest on the IT3(b) tax certificates are payable to the member.	
The following documents must be provided to the member:	
<ul style="list-style-type: none"> • IRP5 tax certificate issued in June 2006; • IRP5 tax certificate issued in 2016; and • IT3(b) tax certificates reflecting the interest that accrued for each year of assessment. 	

Not all funds complied with their obligation to apply for a tax directive when the benefit was classified as an “unclaimed benefit”. **Example 3** explains the process to be followed when this obligation was not complied with.

Example 3 – Unclaimed benefit that accrued after the 2003-project and the legislative requirements were not complied with

Facts:

On 1 December 2006 a lump sum benefit of R182 600 accrued to Y as a result of a dismissal under the rules of ABC Retirement Fund. The benefit was not claimed by the member on dismissal. The fund did not classify the lump sum benefit as an “unclaimed benefit” nor did the fund apply for a tax directive on accrual.¹³

¹³ Paragraph 4(1) before amended by the Taxation Laws Amendment Act 7 of 2010.

The unclaimed benefit accrued interest of R35 200 from 1 December 2006 until 1 September 2015. Y did not claim the benefit until 1 September 2015. The average tax rate for Y was 22%.

Result:

The following steps must be followed by the fund administrator:

Step 1: Apply for a tax directive

A tax directive must be applied for on the total value of the unclaimed benefit (R182 600). The reason on the tax directive application must reflect the reason for the exit from the employer's employment as "withdrawal" (dismissal). "Unclaimed benefit" should not be reflected as the reason for the tax directive application.

The interest accrued to or payable to the member does not form part of the unclaimed benefit and only the original value of R182 600 must be reflected as the "gross lump sum amount" on the tax directive application.

	R
Lump sum benefit as at 1 December 2006 (date of accrual)	182 600
Less: Tax at average rate ¹⁴ as per the tax directive	<u>(40 172)</u>
Lump sum benefit after tax was deducted	142 428

The information on the IRP5 tax certificate relating to the tax directive application must include the tax directive number as well as the following:

<u>Source code</u>	<u>Amount</u>
3902	R182 600
4102	R40 172

The transaction year must be reflected as 2016 and the year of assessment as 2007.

Only one tax directive should be applied for reflecting the reason for the exit from the employer's employment as "withdrawal" and not as an "unclaimed benefit".

Step 2: Issue IT3(b) tax certificates

IT3(b) tax certificates must be issued for the interest that accrued on the lump sum benefit for each year of assessment since the accrual of the lump sum. These certificates must be provided to SARS via an IT3(b) submission on an annual basis. The relevant reconciliations must be resubmitted to SARS in order for the interest to be taken into account in the correct year of assessment.

The net lump sum benefit of R142 428 (R182 600 – R40 172) plus the interest reflecting on the IT3(b) tax certificates are payable to the member.

¹⁴ Section 5(10). The special tax rate table applicable to retirement fund lump sum benefits was introduced in 2007 and was applicable to those benefits that accrued on or after 1 October 2007. The special tax rate table in respect of retirement fund lump sum withdrawal benefits was only introduced in 2009 and was only applicable to retirement fund lump sum withdrawal benefits that accrued on and after 1 March 2009.

The following documents must be provided to the member:

- IRP5 tax certificate issued in 2016; and
- IT3(b) tax certificates reflecting the interest that accrued for each year of assessment.

4.3 Position on and after 1 March 2009

The legislation was amended with effect from 1 March 2009 to provide that lump sum benefits that become payable under the rules of the fund as a result of a member's resignation, dismissal or retrenchment from employment will only accrue to the member for tax purposes on the date that he or she elects to receive the lump sum benefit as a cash amount, or to transfer the lump sum benefit to another approved fund. These benefits can, as a result, be classified as an "unclaimed benefit" under the provisions of the Pension Funds Act, but the lump sum benefit only accrues to the member for tax purposes once he or she makes an election regarding the benefit. The classification and tax treatment of lump sum benefits due to a member's resignation, dismissal or retrenchment from employment, which accrued before 1 March 2009, remains unchanged.

A lump sum benefit that accrued to a member as a result of his or her retirement before 1 March 2015 accrued to a member on his or her retirement date.¹⁵ The legislation provided no flexibility for a member to determine when he or she would like to receive his or her benefits. The provision was amended with effect from 1 March 2015 to provide that retirement benefits only accrue when an election is made by the member to receive the benefit. This means that no benefit payable after 1 March 2015, as a result of a member's retirement, can be classified as an "unclaimed benefit" for income tax purposes.

The benefit payable by the fund as a result of the member's death accrues to the deceased member on his or her date of death. The fund has an obligation to apply for a tax directive on the death of the member,¹⁶ the reason must be indicated as "death before retirement" and an IRP5 tax certificate must be issued. The payment of these benefits is regulated by the provisions of section 37C of the Pension Funds Act but there are some instances where the beneficiaries of the deceased cannot be traced within 24 months after the date of the member's death. These benefits should be classified as "unclaimed benefits" if the death benefit was not claimed by the beneficiaries. The death benefit, classified as an "unclaimed benefit", will not be subject to tax in the hands of the deceased member's beneficiaries.

4.4 Transfers of unclaimed benefits

4.4.1 Benefits that accrued before 1 March 2009

Historically, unclaimed benefits remained in the fund until claimed by the members or the member's beneficiaries. This practise prohibited funds from being liquidated under section 28 of the Pension Funds Act, as a fund could only be liquidated once all the members, assets and liabilities have been paid or transferred out of the fund.

¹⁵ Definition of "retirement date" before amended by the Taxation Laws Amendment Act 3 of 2008.

¹⁶ Paragraph 9(3) of the Fourth Schedule.

The definitions of “pension preservation fund” and “provident preservation fund” were inserted into the Income Tax Act with effect from 1 January 2009.¹⁷ These definitions specifically made provision for a pension preservation fund or provident preservation fund to be established solely for the purpose of housing unclaimed benefits. This gave a fund the option to transfer all the unclaimed benefits in a fund to an approved unclaimed benefit preservation fund¹⁸ rather than keeping these benefits in the fund.

Only lump sum benefits that were classified by the fund as “unclaimed benefits” and have been taxed as such can be transferred to an unclaimed benefit preservation fund. The transfer of the unclaimed benefits in the fund to an unclaimed benefit preservation fund is an accrual event for income tax purposes.¹⁹ The fund transferring the unclaimed benefits has an obligation to apply for tax directives before transferring the unclaimed benefits. An amount equal to the value of the unclaimed benefit to be transferred to the unclaimed benefit preservation fund will be allowed as a deduction against the lump sum benefit, provided that the unclaimed benefit has been taxed before the transfer took place.²⁰ The transferring fund did not have to apply for a tax directive if the transfer was done under the provision of section 14(1) of the Pension Funds Act.²¹ A pension fund can only transfer unclaimed benefits to an unclaimed benefit pension preservation fund, and a provident fund can only transfer unclaimed benefits to an unclaimed benefit provident preservation fund.

The IRP5 tax certificate relating to the tax paid on the unclaimed benefit must be provided to the unclaimed benefit preservation fund on transfer. The member might be taxed on the benefit for the second time when he or she claims the benefit if an IRP5 tax certificate is not provided to the unclaimed benefit preservation fund. The unclaimed benefit preservation fund has an obligation to apply for a tax directive when the benefit is claimed by the member.

The transfer of the unclaimed benefit does not change or postpone the original date of accrual to the date on which the transfer takes place. The original date of accrual will still be applicable when the member claims the benefit from the unclaimed benefit preservation fund.

A member who claims a benefit, classified as an “unclaimed benefit”, which accrued before 1 March 2009, cannot elect to transfer the benefit to another fund. The Second Schedule provides a deduction in respect of a transfer to another qualifying fund.²² This deduction is, however, only available for the year of assessment in which the benefit accrues (that is, in the year of resignation). The effect of this is that where a beneficiary failed to elect to transfer to another fund in the year of assessment during which the benefit accrued, the deduction falls away.

¹⁷ Taxation Laws Amendment Act 3 of 2008.

¹⁸ An “unclaimed benefit preservation fund” means a “pension preservation fund” or “provident preservation fund”, as defined in section 1(1) of the Income Tax Act, established solely for housing unclaimed benefits.

¹⁹ Paragraph 4(1)(c).

²⁰ Paragraph 6(1)(b)(iv).

²¹ Paragraph 9(3)(b) of the Fourth Schedule.

²² Paragraphs 6(1)(a)(ii)(aa) and 6(1)(a)(ii)(cc).

Example 4 – Transfer of benefits taxed during the 2003-project to an unclaimed benefit preservation fund

Facts:

On 1 December 1999 a lump sum benefit of R100 000 accrued to X under the rules of ABC Retirement Fund. The benefit was not claimed by the member and was taxed at a rate of 25% during the 2003-project. The value of the unclaimed benefit after tax was R75 000.

The fund was required to issue an IRP5 tax certificate to the member reflecting the original lump sum of R100 000 and employees' tax of R25 000 deducted. In addition IT3(b) tax certificates were issued by the fund for the member for each year of assessment that interest accrued.

The trustees of the fund decided to transfer all the unclaimed benefits in ABC Retirement Fund to DEF Unclaimed Benefit Pension Preservation Fund on 30 June 2014. Interest accrued to the value of R60 000 from 1 December 1999 to 30 June 2014. The fund is obliged to apply for a tax directive on the total value of the original benefit (R100 000) being transferred to the unclaimed benefit preservation fund.

The interest accrued to or payable to the member does not form part of the unclaimed benefit and therefore the original value of R100 000 must be reflected as the "gross lump sum amount" on the tax directive application.

The IT3(b) tax certificates that reflect the total R60 000 interest accrued to the member for the period of 1 December 1999 to 30 June 2014 and the IRP5 tax certificate issued during the 2003-project must be provided to the unclaimed benefit preservation fund on transfer.

X approached the unclaimed benefit preservation fund on 2 May 2016 to claim the benefit from the unclaimed benefit preservation fund. Interest accrued to the value of R20 000 from 1 June 2014 to 2 May 2016. The average tax rate for X was 25%.

Result:

The following steps must be followed by the fund administrator:

Step 1: Apply for a tax directive

A tax directive must be applied for on the total value of the unclaimed benefit (R100 000) as at the date of accrual. The reason on the tax directive application must reflect the reason for the exit from the employer's employment as "resignation".

Once again it should be reiterated that the interest accrued to or payable to the member does not form part of the unclaimed benefit and only the original value of R100 000 must be reflected as the "gross lump sum amount" on the tax directive application.

	R
Lump sum benefit as at 1 December 1999 (date of accrual)	100 000
Less: Tax at average rate ²³ per the tax directive	<u>(25 000)</u>
Lump sum benefit after tax was deducted	75 000
 <i>Step 2: Issue an IT3(a) tax certificate</i>	
An IT3(a) tax certificate must be issued reflecting the original lump sum.	
<u>Source code</u>	<u>Amount</u>
3902	R100 000
Code 04 must be inserted in the “Reason for Non-Deduction of Employees’ Tax” field (4150).	
The transaction year must be reflected as 2017 and the year of assessment as 2000.	
 <i>Step 3: Issue IT3(b) tax certificates</i>	
IT3(b) tax certificates must be issued in respect of the interest that accrued on the lump sum for each year of assessment since the accrual of the lump sum benefit. The certificates must be provided to SARS via an IT3(b) submission on an annual basis.	
The net lump sum benefit of R75 000 (R100 000 – R25 000) plus the interest indicated on the IT3(b) tax certificates are payable to the member.	
The following documents must be provided to the member:	
<ul style="list-style-type: none"> • IRP5 tax certificate issued during the 2003-project; • IT3(a) tax certificate issued on transfer; • IT3(b) tax certificates reflecting the interest that accrued for each year of assessment before transfer; • IT3(a) tax certificate issued in 2016 for the 2017 reconciliation year; and • IT3(b) tax certificates reflecting the interest that accrued for each year of assessment after transfer. 	

As indicated in **Example 4** the original value of the lump sum benefit of R100 000 must be reflected as the “gross lump sum amount” on the tax directive application even though only R75 000 was transferred. This must be done to ensure that the correct employees’ tax liability is calculated and deducted from the lump sum benefit. The tax liability on the lump sum benefit will not be calculated correctly if the original value of the lump sum benefit is not reflected on the tax directive application form. The principle set out in this paragraph is also applicable to **Examples 5** and **6**.

²³ Section 5(10). The special tax rate table applicable to retirement fund lump sum benefits was introduced in 2007 and was applicable to those benefits that accrued on or after 1 October 2007. The special tax rate table in respect of retirement fund lump sum withdrawal benefits was only introduced in 2009 and was only applicable to retirement fund lump sum withdrawal benefits that accrued on and after 1 March 2009.

Example 5 – Transfer of benefits that accrued after 2003-project to an unclaimed benefit preservation fund and complied with the legislative requirements

Facts:

On 1 November 2008 a lump sum benefit of R650 000 accrued to X as a result of resignation under the rules of EFG Retirement Fund. The benefit was not claimed by the member on resignation. The lump sum benefit was classified as an “unclaimed benefit” on 1 May 2009.

The fund applied for a tax directive with the reason indicated as “unclaimed benefit”. The average tax rate for X was 22%. The employees’ tax of R143 000 was deducted from the unclaimed benefit and an IRP5 tax certificate was issued for the member. IT3(b) tax certificates were issued for the member for each year of assessment that interest accrued.

The trustees of the fund decided to transfer all the unclaimed benefits in EFG Retirement Fund to XYZ Unclaimed Benefit Pension Preservation Fund on 30 June 2013. Interest accrued to the value of R100 000 from 1 November 2008 to 30 June 2013. The fund is obliged to apply for a tax directive on the total value of the benefit (R650 000) transferred to the unclaimed benefit preservation fund. The interest accrued to or payable to the member does not form part of the unclaimed benefit and therefore the original value of R650 000 must be reflected as the “gross lump sum amount” on the tax directive application.

The IT3(b) tax certificates that reflect the total R100 000 interest that accrued to the member for the period of 1 November 2008 to 30 June 2013 were provided to the unclaimed benefit preservation fund on transfer.

X approached the unclaimed benefit preservation fund on 2 July 2015 to claim the benefit. The unclaimed benefit accrued interest to the value of R20 000 from 30 June 2013 to 2 July 2015. The average tax rate for X was 23% and not 22% based on additional information available on the SARS system.

Result:

The following steps must be followed by the fund administrator:

Step 1: Apply for a tax directive

A tax directive must be applied for on the total value of the unclaimed benefit (R650 000). The reason on the tax directive application must reflect the reason for the exit from the employer’s employment as “resignation”.

The interest accrued to or payable to the member does not form part of the unclaimed benefit and only the original value of R650 000 must be reflected as the “gross lump sum amount” on the tax directive application.

	R
Lump sum benefit as at 1 November 2008 (date of accrual)	650 000
Less: Tax at average rate as per the tax directive	<u>(149 500)</u>
Lump sum benefit after tax was deducted	500 500

Step 2: Determine whether any additional tax is payable

	R
Tax as per tax directive (step 1)	149 500
Less: Tax paid on unclaimed benefit	<u>(143 000)</u>
Tax payable	6 500

The information on the IRP5 tax certificate relating to the directive application must include the tax directive number as well as the following:

<u>Source code</u>	<u>Amount</u>
3902	R650 000
4102	R6 500

The transaction year must be reflected as 2016 and the year of assessment as 2009.

Step 3: Issue IT3(b) tax certificates

IT3(b) tax certificates must be issued for the interest that accrued on the lump sum for each year of assessment since the accrual of the lump sum. The certificates must be provided to SARS via an IT3(b) submission on an annual basis.

The net lump sum benefit of R500 500 (R650 000 – R149 500) plus the interest indicated on the IT3(b) tax certificates are payable to the member.

The following documents must be provided to the member:

- IRP5 tax certificate issued in 2009;
- IT3(a) tax certificate issued on transfer;
- IT3(b) tax certificates reflecting the interest that accrued for each year of assessment before transfer;
- IRP5 tax certificate issued in 2015 for the 2016 reconciliation year; and
- IT3(b) tax certificates reflecting the interest that accrued for each year of assessment after transfer.

Example 6 – Transfer of benefits that accrued after the 2003-project to an unclaimed benefit preservation fund and did not comply with the legislative requirements

Facts:

On 30 January 2009 a lump sum benefit of R450 000 accrued to Y as a result of dismissal under the rules of CBA Retirement Fund. The benefit was not claimed by the member on accrual. The fund did not classify the lump sum benefit as an “unclaimed benefit” nor did the fund apply for a tax directive on dismissal.

The trustees of the fund decided to transfer all the unclaimed benefits in CBA Retirement Fund to GHI Unclaimed Benefit Pension Preservation Fund on 30 June 2012. Interest accrued to the value of R60 000 from 30 January 2009 to 30 June 2012.

Y approached the unclaimed benefit preservation fund on 2 July 2015 to claim the benefit from the unclaimed benefit preservation fund. The unclaimed benefit accrued interest to the value of R45 000 from 30 June 2012 to 2 July 2015. The average tax rate for Y was 22%.

Result:

The following steps must be followed by the fund administrator:

Step 1: Apply for a tax directive

A tax directive must be applied for on the lump sum benefit of R450 000 before the benefit is transferred to the unclaimed benefit preservation fund. The lump sum benefit was identified on 30 June 2012 as an unclaimed benefit to be transferred to the unclaimed benefit preservation fund. The reason on the directive application must be indicated as “unclaimed benefit”. The average tax rate for Y was 22%.

	R
Lump sum benefit as at 30 January 2009 (date of accrual)	450 000
Less: Tax at average rate ²⁴ as per the tax directive	(99 000)
Lump sum benefit after tax was deducted	351 000

The information on the IRP5 tax certificate relating to the directive application must include the tax directive number as well as the following:

<u>Source code</u>	<u>Amount</u>
3902	R450 000
4102	R99 000

The transaction year must be reflected as 2013 and the year of assessment as 2009.

Step 2: Apply for a tax directive on the transfer

A tax directive must be applied for, in respect of the transfer of the lump sum benefit of R450 000 to the unclaimed benefit preservation fund. The reason on the directive application must be reflected as “transfer – unclaimed benefit”.

As previously indicated the interest accrued to or payable to the member does not form part of the unclaimed benefit and therefore the original value of R450 000 must be reflected as the “gross lump sum amount” on the tax directive application.

	R
Lump sum benefit as at 30 January 2009	450 000
Less: Tax payable per the tax directive	(_____)0
Lump sum benefit after tax was deducted	450 000

²⁴ Section 5(10). The special tax rate table applicable to retirement fund lump sum benefits was introduced in 2007 and was applicable to those benefits that accrued on or after 1 October 2007. The special tax rate table in respect of retirement fund lump sum withdrawal benefits was only introduced in 2009 and was only applicable to retirement fund lump sum withdrawal benefits that accrued on and after 1 March 2009.

Step 3: Issue IT3(b) tax certificates

IT3(b) tax certificates must be issued in respect of the interest of R60 000 that accrued on the lump sum benefit for the period of 30 January 2009 to 30 June 2012. These certificates must be provided to SARS via an IT3(b) submission on an annual basis. The relevant reconciliations must be resubmitted to SARS in order for the interest to be taken into account in the correct year of assessment.

Step 4: Apply for a tax directive when the benefit is claimed

A tax directive must be applied for on the lump sum benefit of R450 000. The tax directive application must reflect the reason for exit from the employer's employment, that is, "resignation". Unclaimed benefit should not be reflected as the reason for the tax directive application.

The interest accrued to or payable to the member does not form part of the unclaimed benefit and therefore the original amount of R450 000 must be reflected as the "gross lump sum amount" on the tax directive application.

	R
Lump sum benefit as at 30 January 2009	450 000
Less: Tax at average rate as per the tax directive	<u>(99 000)</u>
Lump sum benefit after tax was deducted	351 000

The information on the IRP5 tax certificate relating to the directive application must include the tax directive number as well as the following:

<u>Source code</u>	<u>Amount</u>
3902	R450 000

Code 04 must be inserted in the "Reason for Non-Deduction of Employees' Tax" field (4150).

The transaction year must be reflected as 2016 and the year of assessment as 2009.

Step 5: Issue IT3(b) tax certificates

IT3(b) tax certificates must be issued for the interest that accrued on the lump sum for each year of assessment since the accrual of the lump sum. The certificates must be provided to SARS via an IT3(b) submission on an annual basis.

The net lump sum benefit of R351 000 (R450 000 – R99 000) plus the interest indicated on the IT3(b) tax certificates issued by the previous fund as well as the interest indicated on the IT3(b) tax certificates issued by the unclaimed benefit preservation fund are payable to the member.

The following documents must be provided to the member:

- IRP5 tax certificate issued in 2012, the 2013 reconciliation year;
- IT3(a) tax certificate issued on transfer;
- IT3(b) tax certificates reflecting the interest that accrued for each year of assessment before transfer;
- IRP5 tax certificate issued in 2016 reconciliation year; and
- IT3(b) tax certificates reflecting the interest that accrued for each year of assessment after transfer.

4.4.2 Benefits that accrued on and after 1 March 2009

All lump sum benefits that become payable from 1 March 2009 under the rules of the fund as a result of a member's resignation, dismissal, retirement²⁵ or death, that are classified as "unclaimed benefits" under the provision of the Pension Funds Act, can be transferred to an unclaimed benefit pension preservation fund or an unclaimed benefit provident preservation fund.²⁶

The transfer of the unclaimed benefits in the fund to the unclaimed benefit preservation fund is an accrual event for income tax purposes.²⁷ The transferring fund has an obligation to apply for a tax directive on the transfer of these unclaimed benefits to the unclaimed benefit pension preservation fund or unclaimed benefit provident preservation fund.²⁸ An amount equal to the value of an unclaimed benefit to be transferred to the unclaimed benefit preservation fund will be allowed as a deduction against the lump sum benefit.²⁹ The transferring fund did not have to apply for a tax directive for any transfer done under the provision of section 14(1) of the Pension Funds Act³⁰ before 1 March 2017. After 1 March 2017 the transferring fund must apply for a tax directive in respect of all transfers, irrespective of whether the transfer was done under the provisions of section 14 of the Pension Funds Act or not.

The unclaimed benefit preservation fund then has an obligation to apply for a tax directive for any lump sum benefit which accrues to the member, indicating the reason for exit on the tax directive application as per the rules of the unclaimed benefit preservation fund.

A member who comes forward after a benefit was classified as an "unclaimed benefit" and transferred to an unclaimed benefit preservation fund, after 1 March 2009, can choose to transfer that benefit to another fund. An amount equal to the value of the benefit transferred is allowed as a deduction against the lump sum benefit³¹ for the following transfers:

- Unclaimed benefit pension preservation fund to a pension fund, pension preservation fund or retirement annuity fund.

²⁵ With effect from 1 March 2015.

²⁶ Paragraphs 6(1)(a)(ii)(aa) and 6(1)(a)(ii)(cc).

²⁷ Paragraph 4(1)(c).

²⁸ Paragraph 9(3) of the Fourth Schedule.

²⁹ Paragraph 6(1)(b)(iv).

³⁰ Paragraph 9(3)(b) of the Fourth Schedule

³¹ Paragraph 6(1)(a)(ii)(aa) and 6(1)(a)(ii)(cc).

- Unclaimed benefit provident preservation fund to a pension fund, pension preservation fund, provident preservation fund or retirement annuity fund.

The definition of “provident preservation fund” in section 1(1) of the Income Tax Act³² only provides for unclaimed benefits relating to former members of a provident fund or nominees or dependants of that former member to be transferred to a provident preservation fund. This means that a transfer from an unclaimed benefit pension preservation fund to a provident preservation fund is not allowed and no deduction will be allowed for such a transfer.

5. Conclusion

The tax treatment of a lump sum benefit, classified as an “unclaimed benefit”, depends on the date on which the benefit accrued to the member.

Legal Counsel
SOUTH AFRICAN REVENUE SERVICE

³² Paragraph (a)(iii).

Annexure – The law

Income Tax 58 of 1962 – before 1 March 2009

Definition of “lump sum benefit” in paragraph 1 of the Second Schedule applicable after 1 March 1998

“**lump sum benefit**” includes any amount determined by the commutation of an annuity or portion of an annuity and any fixed or ascertainable amount (other than an annuity) payable by or provided in consequence of membership or past membership of any fund referred to in paragraph (e) of the definition of "gross income" in section one of this Act whether in one amount or in instalments;

Paragraph 4(1) of the Second Schedule

(1) If in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund any lump sum benefit arising out of a member's withdrawal or resignation is payable at a fixed or ascertainable future date, such benefit shall be deemed to have accrued to such member on that date or on the date of his or her death, whichever is earlier, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him or her upon his or her withdrawal or resignation from the fund or upon his or her retirement or immediately prior to his or her death, as the case may be,

Income Tax Act 58 of 1962 – after 1 March 2009

Definition of “lump sum benefit” in paragraph 1 of Second Schedule

“**lump sum benefit**” includes—

- (a) any amount determined in respect of the commutation of an annuity or portion of an annuity—
 - (i) payable by; or
 - (ii) provided in consequence of membership or past membership of, a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and
- (b) any fixed or ascertainable amount (other than an annuity)—
 - (i) payable by; or
 - (ii) provided in consequence of membership or past membership of, a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,

whether in one amount or in instalments, but does not include any amount deemed to be income accrued to a person in terms of section 7(11);

Paragraph 4(1) of the Second Schedule with effect from 1 March 2009³³

(1) Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, any lump sum benefit arising out of a member's withdrawal or resignation shall, subject to paragraph 3, be deemed to have accrued to such member on the date he or she elects to have the benefit paid to him or her or the date on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or on the date of his or her death, whichever is earlier, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him or her upon his or her withdrawal or resignation from the fund or upon his or her retirement or immediately prior to his or her death, as the case may be.

Paragraph 4(1) of the Second Schedule with effect from 1 March 2010³⁴

(1) Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, any lump sum benefit shall be deemed to have accrued to such member on the earliest of the date—

- (a) on which an election is made in respect of which the benefit becomes recoverable;
- (b) on which any amount is deducted from the benefit in terms of section 37D(1)(a), (b) or (c) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;
- (d) of his or her retirement; or
- (e) of his or her death,

and shall be assessed to tax in respect of the year of assessment during which such lump sum benefit is deemed to accrue.

Paragraph 4(1) of the Second Schedule with effect from 10 January 2012³⁵

(1) Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, and subject to paragraphs 3 and 3A, any lump sum benefit shall be deemed to have accrued to a member of such fund on the earliest of the date—

- (a) on which an election is made in respect of which the benefit becomes recoverable;
- (b) on which any amount is deducted from the benefit in terms of section 37D(1)(a), (b) or (c) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;
- (d) of his or her retirement; or
- (e) of his or her death,

and shall be assessed to tax in respect of the year of assessment during which such lump sum benefit is deemed to accrue.

³³ Revenue Laws Amendment Act 60 of 2008 (promulgated 8 January 2009).

³⁴ Taxation Laws Amendment Act 7 of 2010 (promulgated 2 November 2010).

³⁵ Taxation Laws Amendment Act 24 of 2011 (promulgated 10 January 2012).

Paragraph 4(1) of the Second Schedule with effect from 1 March 2012³⁶

(1) Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, and subject to paragraphs 3 and 3A, any lump sum benefit shall be deemed to have accrued to a person who is a member of such fund on the earliest of the date—

- (a) on which an election is made in respect of which the benefit becomes recoverable;
- (b) on which any amount is deducted from the benefit in terms of section 37D (1)(a), (b) or (c) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;
- (d) of his or her retirement; or
- (e) of his or her death,

and shall be assessed to tax in respect of the year of assessment during which such lump sum benefit is deemed to accrue;

Pension Funds Act 24 of 1956**Definition of “unclaimed benefit” in section 1 with effect from 1 September 2008**

“unclaimed benefit” means—

- (a) any benefit, other than a benefit referred to in paragraphs (b), (c) and (d), not paid by a fund to a member, former member or beneficiary within 24 months of the date on which it in terms of the rules of the fund, became legally due and payable: or
- (b) in relation to a benefit payable as a pension or annuity, any benefit which has not been paid by a fund to a member, former member or beneficiary within 24 months of—
 - (i) the expiry date of any guarantee period for pension payments provided for in the rules of the fund; or
 - (ii) the date on which any pension payment or annuity legally due and payable in terms of the rules of the fund became unpaid; or
- (c) in relation to a benefit payable to a former member who cannot be traced in accordance with section 15B(5)(e) of this Act, any benefit that has become legally due and payable to a former member in terms of a surplus apportionment scheme approved in terms of this Act not paid to that former member within 24 months of the date on which it became legally due and payable; or
- (d) any benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund applies for cancellation of registration in terms of section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid,

excluding—

 - (aa) a benefit due to be transferred as part of a transfer of business in terms of section 14, where an annuity is purchased in respect of a pensioner or otherwise in terms of this Act; or
 - (bb) a death benefit payable to a beneficiary in terms of section 37C of this Act not paid within 24 months from the date of the death of the member or such longer period as reasonably justifiable by the board of the fund;.

³⁶ Taxation Laws Amendment Act 22 of 2012 (promulgated 1 February 2013).

Definition of “unclaimed benefit” in section 1 with effect from 16 January 2014

“unclaimed benefit” means—

- (a) any benefit, other than a benefit referred to in paragraphs (aA), (b), (c) and (d), not paid by a fund to a member, former member or beneficiary within 24 months of the date on which it in terms of the rules of the fund, became legally due and payable;
- (aA) a death benefit payable to a beneficiary under section 37C not paid within 24 months from the date on which the fund became aware of the death of the member, or such longer period as may be reasonably justified by the board of the fund in writing;
- (b) in relation to a benefit payable as a pension or annuity, any benefit which has not been paid by a fund to a member, former member or beneficiary within 24 months of—
 - (i) the expiry date of any guarantee period for pension payments provided for in the rules of the fund; or
 - (ii) the date on which any pension payment or annuity legally due and payable in terms of the rules of the fund became unpaid;
- (c) in relation to a benefit payable to a former member who cannot be traced in accordance with section 15B(5)(e), any benefit that has become legally due and payable to a former member in terms of a surplus apportionment scheme approved in terms of this Act not paid to that former member within 24 months of the date on which it became legally due and payable;
- (d) any benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund applies for cancellation of registration in terms of section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid; or
- (e) any amount that remained unclaimed or unpaid to a non-member spouse within 24 months from the date of the deduction contemplated in section 37D(4)(a)(ii),

but does not include a benefit due to be transferred as part of a transfer of business in terms of section 14, where an annuity is purchased in respect of a pensioner or otherwise in terms of this Act;