

## **NEWSLETTER NO. 23 : 22 OCTOBER 1991**

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### **1. THE SUPERANNUATION SCHEME (FEES) REGULATIONS 1991**

**1.1.** These Regulations come into force on the 28th day after the date of their notification in the Gazette. They were published in the Gazette on 3 October 1991.

**1.2** The Regulations prescribe fees payable under the Superannuation Schemes Act 1989. The only difference between these and the previous Regulations is that -

- \* an additional fee of \$12.00 per month (inclusive of GST) is charged in respect of each complete month for which a copy of a trustees annual report or an actuarial examination report is late in being filed with the Government Actuary.

### **2. ANNUAL REPORT TO MINISTER OF FINANCE FOR THE YEAR ENDED 30 JUNE 1991**

**2.1** A copy of this Report is enclosed.

### **3. TRUSTEES ANNUAL REPORTS**

**3.1** Your attention is drawn to sections 4.3 and 9 of my annual report to the Minister. At the date of writing the report, over 200 notices of de-registration or wind-up had been issued in respect of schemes where trustees had persistently refused (over a period of years) to supply copies of annual reports to the Government Actuary.

Most of these 200 plus schemes are "personal" schemes which were set up to take advantage of the favourable tax treatment available under the previous

superannuation schemes regime. However, these 200 plus schemes also cover the range of different types of registered schemes: schemes sold by life offices to the general public, schemes set up by large, medium and small employers for their staff, as well as "one-person" schemes.

In some instances, trustees have objected to the decision to de-register the scheme, promising to produce the outstanding reports within a short space of time. Where consideration has shown that such promise is credible, I have been prepared to extend the 28 days objection period to enable the trustees to file the outstanding reports. When such outstanding reports have been received within the extended objection period, I have allowed the trustees objection and the scheme has remained registered.

- 3.2** Section 14(3) of the Superannuation Schemes Act 1989 requires trustees to send a copy of their trustees annual report to the Government Actuary on completing that report (and NOT 6 months after the end of each financial year).

It is apparent that some trustees are distributing copies of their annual report to the members, and then waiting several months before sending a copy of that report to the Government Actuary. Please note that is a prosecutable offence in terms of section 25 of the Act.

I also note that some trustees are not forwarding a copy of an actuarial examination report to this office immediately on receiving that report. This is also a prosecutable offence in terms of section 25 of the Act.

- 3.3** The annual report to the Minister shows that, at one stage in the past year, the trustees of 1829 schemes had not forwarded to the Government Actuary copies of current and/or previous years annual reports.

A considerable part of the office's resources were devoted to improving that situation - section 9.3 of the annual report to the Minister refers. The office is in the process of finalising the worst cases (paragraph 3.1 of this Newsletter refers) and will soon turn its attention to consider prosecuting other groups of trustees who are in breach of their responsibilities.

Trustees who have inadvertently breached the Act, particularly as indicated by paragraph 3.2 of this Newsletter, are asked to remedy that error forthwith.

- 3.4** Please note that a separate trustees report is required for each registered scheme. It is not acceptable to forward one report which covers more than one registered scheme.

#### **4. SECTION 204Q INCOME TAX ACT 1976**

- 4.1** This section permits trustees to apply to the Government Actuary to classify their scheme as a "Qualifying Superannuation Scheme". This classification enables trustees of certain types of scheme to be subject to the tax regime for registered superannuation schemes and not the "life office" tax regime.

- 4.2** Enclosed with this Newsletter is a copy of a "Check List" used in this office.

- 4.3** The following extract from a letter which I have written may also be of interest to you:

"I agree with your view that it is possible for an employer to take a "holiday" from making contributions to a superannuation scheme, where the scheme has a surplus of assets over liabilities, without jeopardising the scheme's ability to become a Qualifying Superannuation Scheme. (N.B. please take great care as between a "contribution holiday" and "suspending contributions". In some schemes, the trust deed states that the suspension of contributions automatically leads to the wind-up of a scheme, but a contribution holiday recommended by an actuary does not.)

However, I have come across a number of cases where the surplus is so high that there is almost no possibility at all that anyone (employer and employee members) would need to make any contributions at all in future; and in many such cases the employee members are being required to continue paying contributions, thus inflating the surplus to an even higher figure and reducing still further the remote possibility that the employer might have to pay significant contributions. In those cases, I have declined to approve the scheme as a Qualifying Superannuation Scheme.

There are also some schemes where all the members were compulsorily transferred out without their knowledge or consent (prior to 1 August 1990), leaving behind a few pensioners and a large amount of surplus. I have also declined to approve such schemes as Qualifying Superannuation Schemes."

- 4.4** The latter paragraph of 4.3 above raises an interesting question. The trustees of a scheme which has a large number of pensioners might find that the "life office" tax regime would produce a lower liability for tax than the tax regime for registered superannuation schemes. This is because the calculation of "mortality profit" under section 204F of the Income Tax Act produces a negative figure in respect of persons who are receiving a pension. There are, of course, other factors to consider, but exemption from the life office tax regime is not necessarily in the trustees best interests. I am aware of at least one scheme where the life office tax basis has produced a lower tax liability.

N T Malley  
Government Actuary

Encl.

N.B. As from 25 October 1991 the telephone number for this office will be (04) 472-5470