Statutory Instrument No. 66 of 1995

INCOME TAX ACT
(No. 12 of 1995)

INCOME TAX (SUPERANNUATION FUNDS) REGULATIONS, 1995

(*Published on 13th October, 1995*)

ARRANGEMENT OF REGULATIONS

REGULATION

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 138 of the Income Tax Act, the following Regulations are hereby made —

Citation and commencement

1. These Regulations may be cited as the Income Tax (Superannuation Funds) Regulations, 1995, and shall be deemed to have come into operation on 1st January, 1992.

Definition of approved superannuation fund

2. (1) An "Approved Superannuation Fund or Scheme" means a fund or scheme, as the case may be, that meets with the following criteria and has been approved by the Commissioner —

(*a*) "the Fund shall be registered as a pension or retirement annuity fund under the Pensions and Provident Funds Act and shall be a legal person whose assets are separate from the assets of any employer or any member of the Fund; Cap. 27.03

(*b*) the "Scheme" must — Cap. 55.03

(i) where it permits participation by persons who fall within the meaning of the term "residents" in the Exchange Control Act, be a scheme established and administered by an insurer in terms of the Insurance Industry Act, and Cap. 46.01

(ii) where it is a scheme for "temporary residents" within the meaning of that term in the Exchange Control Act, be a scheme established and administered by an insurer approved by th Commissioner:

Provided that the criteria stated in this paragraph shall not apply to contributions already authorised by the Commissioner to foreign based funds or schemes;

(*c*) any annuities purchased by a retirement annuity fund on behalf of a "resident" within the meaning of that term in the Exchange Control Act, shall unless it is purchased from itself be purchased from an insurer registered under the Insurance Industry Act;

(*d*) subject to paragraph (*f*), the rules of a fund or scheme shall not except in cases of proven ill health, permit the retirement of a member before he or she has reached the age of 55;

(*e*) the rules for a fund or scheme may —

(i) allow a member to commute up to 33 $^{1}/_{3}$ per cent of his pension on retirement,

(ii) provide for the payment of a death benefit (inclusive of any funeral benefit) to the dependants or estate of a member, so however that where the deceased member is a member of an occupational pension fund or scheme the benefit does not exceed four times the annual eligible emoluments of the member at the date of his death or four times his annual pension in the case of a pensioner or, where the death benefit is provided by the fund or scheme other than an occupational pension fund or scheme, by purchase of life insurance, the premium paid by the fund does not exceed 7,5 per cent of the total annual contributions made to the said fund or scheme,

(iii) permit the payment to the dependants or the estate of a deceased member, other than to the dependants or the estate of a deceased pensioner, of all the contributions made by him or on his behalf together with any return on the investment of such contributions,

(iv) provide for the payment of a widow's or widower's pension of up to 50 per cent, an orphan's pension of up to 25 per cent per child and a dependant's pension of up to 10 per cent per dependant of the pension which the deceased member would have been entitled to had he or she retired at the date of his or her death or was receiving at the time of his or her death, so however, that the total benefits paid shall not exceed 100 per cent of such deceased member's pension,

(v) allow a member on withdrawal from a fund, for reasons other than retrenchment, to commute the equivalent of 25 per cent of his or her pension entitlement or P5000,00, whichever is the greater, so however, that the total benefits paid shall not exceed 100 per cent of such member's entitlement. If the residual amount of the member's pension entitlement after the commutation is less than P5000,00, such residual may be encashed in full,

(vi) allow a member on withdrawal from a fund for reasons of retrenchment to commute the equivalent of 33 $^{1}/_{3}$ per cent of his pension entitlement or P5000,00, whichever is the greater, so however, the total benefits paid shall not exceed 100 per cent of such member's entitlement. If the residual amount of the member's pension entitlement after the commutation is less than P5000,00, such residual may be encashed in full:

Provided that the withdrawal benefits payable in terms of subparagraphs (v and vi) are applied only to benefits accrued whilst the employee was a member of the fund from which he or she is withdrawing and shall exclude any benefits transferred from other approved funds. This proviso shall apply *mutatis mutandis* to an employee rejoining a fund of which he or she was previously a member,

(vii) where the pension payable to a pensioner, a widow, widower, orphan or dependant is less than P500 per annum, provide for the commutation, with the approval of the Commissioner, of the entirety of such pension to a single lump sum payment;

(*f*) where the fund or scheme is a fund or scheme created for the provision of pension benefits for the employees of a particular employer, employment under whom is the sole criteria for membership, and the employer contributes a minimum of 51 per cent of the total contributions made to the said fund or scheme (in these Regulations referred to as an "occupational fund or scheme"), the employer may with the consent of the employer, retire at any time after he reaches the age of 50.

Cessation of approval of superannuation fund

3. An approved superannuation fund or scheme shall cease to be an approved fund or scheme, as the case may be, if its rules are amended and such amendment is not approved by the Commissioner.

Revocation of S.I. 101 of 1988

4. The Income Tax (Superannuation Funds) Regulations, 1988, are hereby revoked.

MADE this 22nd day of September, 1995.

F.G. MOGAE,
Minister of Finance and Development Planning.

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