



NSSF ACT 2013 & iTAX FORUM

“The N.S.S.F. Act No. 45 of 2013”

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Hilton Hotel, Nairobi

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THE NSSF ACT 2013

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Regulations for Employers, Employees, and Self Employed Individuals

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Regulations have not been published

Now Expected next month (March 2014) – But may take longer due to current squabbles

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Responsibilities of the Employer

Register with the fund as a contributing employer and register employee or employees as members of the fund

Registered employers must:

- **keep a proper and up to date register of the earnings and other particulars prescribed by the Board of their employees**
- **produce the register when demanded by a compliance officer**
- **retain the register for a period prescribed by the Board but not exceeding 10 years**

Make mandatory payments to the fund

→WHAT IS A REGISTER ?

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Pensionable Salary

• **Act states that “pensionable earnings” means for a Pension Fund Member, the lower of the member’s monthly wages and the Upper Earnings Limit.**

Also provides that “wages” include all emoluments payable to an employee under a contract of service excluding fluctuating emoluments etc;

• **Comment: the definitions of both wages and pensionable earnings in the Act may convey varying legal interpretations - administrative challenges in terms of compliance by employers**

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“Contract of service”

•the act has provided that the - contract of service” means an agreement, whether entered into orally or in writing, and whether express or implied, to employ or to serve as an employee for a period of time and includes a contract of apprenticeship or indentured learnership;

•Comment : in line with the provisions of the employment act , it is quite difficult for employers to comply with this provision

•Need for clarity of definition on pensionable salary in the Act

•Conflict with the RBA Act on benefits access options :
Provident , Pension and Deferred benefits

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- **NSSF Board of Trustees appointment and governance**

The appointment and member representation conflicts with the RBA provisions which requires at least 50% member representation on the Board of Trustees

- **Scheme Administration capacity to ensure proof of the protected rights : -**

The Act has provided that Tier 11 protected rights for members in occupational pension schemes should not be accessed until retirement .

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Implications of the Act

- **Employers may have to appropriately review the terms of employment contract in line with the pension contributions to comply with this Act . i.e. gratuity benefits structures , staff members on contract and levels of contributions rates to retirement benefits schemes**
- **Promote harmony - Member Education and Training is required to (both members and employers)**
- **Appropriate review of Retirement Benefits Scheme governance documentations such as Trust Deed and Rules where applicable**

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Non – Compliance : Penalties for Default Payment and Incorrect Contributions

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CONSEQUENCE OF NON – COMPLIANCE

- **Misconduct by officers of the Fund, as set out in the Act, are an offence which on conviction is liable to a fine not exceeding Kshs 2 million or to imprisonment for a term not exceeding 5 years or both. Any money, property, or reward obtained fraudulently shall be forfeited to the Fund.**
- **Any person who defrauds the Fund commits an offence which on conviction is liable to a fine not exceeding Kshs 2 million or to imprisonment for a term not exceeding 2 years or both. Any money, property, or reward obtained fraudulently shall be forfeited to the Fund.**

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- **An employee of the Fund who conspires or aids and abets others in the commission of an offence shall on conviction be liable to a fine not exceeding Kshs 2 million or to imprisonment for a term not exceeding 2 years or both. Any money, property, or reward obtained fraudulently shall be forfeited to the Fund.**
- **The penalties above do not preclude the Board from taking any other disciplinary action it deems appropriate. The provisions in this regard shall also apply to the Trustees with such modification as maybe necessary.**

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Offences for which sanctions are provided :-

a) evades payment of contributions or other amounts due;

b) knowingly makes a false statement or produces false documentation;

c) in order to benefit himself or some other person knowingly makes any false statement or representation or produces false documents in a material particular;

d) wilfully misrepresents or fails to disclose a material fact or fails to make any payments due;

e) fails to disclose or who misrepresents any material fact whether fraudulently or otherwise and receives a benefit he is not entitled to;

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- f) fails to comply with regulations as a result of which there is a loss to the Fund or as a result of which the records of any member or matter under the Act cannot be maintained;**
- g) obtains the consent of any employer or employee under duress or undue influence; or**
- h) knowingly deducts from an employee amounts in excess of amounts due;**

Other Offences in the Act include : -

- I. Failure to register – a fine not exceeding Kshs. 50,000**
- II. Late Contribution i.e. not made within one month after the end of the month in which the contribution fell due – a penalty of 5% of the amount of the contribution for each month or part thereof they remain due.**

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Penalties for default and incorrect contributions ? ?

- Contributions not made within one month after the end of the month in which the contributions fell due, will be subject to a penalty of 5% of the amount of the contribution for each month or part thereof they remain due.

- Where contributions are made in error and the managing trustee is satisfied that it was a bona fide error, the amount so paid can be refunded without interest, with the consent of the payer.

- Excess contributions paid will be refunded without interest and with the consent of the payer.

→ **WHO IS THE PAYER !!**

→ **FORM OF CONSENT !!**

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ROLE OF KRA & RBA IN THE FUND

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Exemption from Income Tax [Cap 470]

➤ **The Act states that the Fund shall not be liable to pay income tax on its income and no tax by whatever name called shall be payable in respect of any property vested in the Fund.**

➤ **Benefits payable by the Fund and benefits payable under Protected Rights for a contracted – out scheme shall**

- **Be exempted from taxation; and**
- **Not be liable to attachment for debt under any process of law**

➤ **Contributions to the Fund shall not be assets for the benefit of creditors in the event of the bankruptcy or insolvency of the Contributor**

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KRA A SUPPER COLLECTOR !

Sh600m

Initial collection

This is the amount NSSF collected prior to engaging the services of Kenya Revenue Authority (KRA)

Sh1.2b

Growth in revenue

The monthly contribution climbed to this amount immediately after KRA took over collection

→ WHERE DID THE DIFFERENCE GO ? ?

“Standard on Sunday, January 14, 2014”

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ROLE OF RBA IN THE FUND

- **To regulate and supervise the establishment and management of the fund**
- **To prescribe terms and conditions for which benefits accruing under the fund may be used to secure a mortgage loan from a bank (Sect. 31)**
- **Register the scheme from which an employer may choose to opt out (Sect. 36)**
- **Make provisions for investing funds**
- **Seat at the Tribunal to solve disputes on matters of the Fund**

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TAX IMPLICATIONS TO EMPLOYERS AND EMPLOYEES

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Contributions to be a tax-deductible expense

- **Contributions to the Pension Fund including where applicable a contracted-out-scheme**
- **At the prescribed rates by a person under the Act shall form part of tax-deductible expenses in the computation of taxable income**
- **Taxes payable by the person or, as the case may be, by an employee under any relevant law applicable to income tax**

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Stamp duty shall not be chargeable in respect of any receipt, contract, instrument or other documents executed by or on behalf of the fund, but for this exemption, the fund or any person acting on behalf of the fund would be liable to pay such duty

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THE NUMBERS

Collections - Sh180B

What is expected to be collected by NSSF annually after completion of the sixth year implementation period

→ALL EXEMPTED FROM TAX ? !

→INCOME TAX ACT PROVISIONS ?

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&
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