



TAX COMPLIANCE, PLANNING & MANAGEMENT WORKSHOP

“The New N.S.S.F. Act, 2013”

2014

Hilton Hotel, Nairobi

Presented by :

CPA Erastus K. Omolo,

Erastus & Co, Certified Public Accountants

THE NEW NSSF ACT 2013

CONTENTS

- ❑ **Overview**
 - **Definition of Some Terms**
 - **Objective of NSSF**
 - **Funds Registration, Membership and Contribution**
- ❑ **Consequences of Non-Compliance**
 - **Clarifications, Debate and Confusions**
 - **Computation Guidelines**
- ❑ **Implications of the Act on Business, Employers and Employees**

THE NEW NSSF ACT 2013

OVERVIEW



THE NEW NSSF ACT 2013

CONTENTS

Parts of the NSSF Act are:-

I. Preliminary

II. Establishment and Objectives of the National Social Security Fund

III. National Social Security Fund Board of Trustees

IV. Funds, Registration, Membership and Contribution

V. Benefits

VI. Finance, Administration and Management of Funds

VII. Legal Proceedings

VIII. Miscellaneous

THE NEW NSSF ACT 2013

Schedules in the Act are:-

First Schedule - Exempt Person

Second Schedule - Transitional Provisions

Third Schedule - Table defining Progression of Rates of Tier I Contributions

Fourth Schedule - Reference Scheme Test

The new NSSF Act is divided into eight (8) parts, seventy two (72) sections and four (4) schedules.

THE NEW NSSF ACT 2013

Definition of some terms :

• **“CONTRACTED-OUT SCHEME”** means an occupational retirement benefits scheme including an umbrella retirement benefits scheme or an individual retirement benefit scheme which has been approved and registered by the Authority for purposes of receiving Tier II Contributions and, where applicable, Tier II Fund Credit transfers from the Fund;

THE NEW NSSF ACT 2013

Definition of some terms :

• **“INTEREST”** means, in relation to each Member, the investment income credited to the accounts of individual members at such rates as the Board may, in consultation with the Actuary or such other qualified person, determine, in their reasonable discretion from time to time declare, at least annually, having regard to the income on the Fund's assets;

THE NEW NSSF ACT 2013

Definition of some terms :

• **“LOWER EARNINGS LIMIT”** means, subject to the Third Schedule, for each financial year , the amount gazetted by the Cabinet Secretary from time to time as the average statutory minimum monthly basic wage for the top urban centres, second tier urban centres and rural areas for the year;

THE NEW NSSF ACT 2013

Definition of some terms :

•**“NATIONAL AVERAGE EARNINGS”** means for each financial year, the average wage earnings per employee as published by the Kenya National Bureau of Statistics in the Economic Survey for the prior year;

•**“PENSIONABLE AGE”** means the age of sixty years;

•**“PENSIONABLE EARNINGS”** means for a Pension Fund Member, the lower of the member's Monthly wages and the Upper Earnings Limit;

THE NEW NSSF ACT 2013

Definition of some terms :

• **“TIER I CONTRIBUTIONS”** means for any month, contributions in respect of Pensionable Earnings up to the Lower Earnings Limit;

• **“TIER II CONTRIBUTIONS”** means for any month, contributions in respect of Pensionable Earnings above the Lower Earnings Limit;

THE NEW NSSF ACT 2013

Definition of some terms :

•“**TIER I PENSION FUND CREDIT**” means in relation to each Pension Fund Member, the portion of the Pension Fund Credit at any particular date equal to the aggregate of the Tier I Contributions by and in respect of the Member less deduction for covering the estimated annual cost of minimum benefits on death and disability with interest thereon;

GOOD QUESTIONS TO ASK (Why?):-

- Cost of death
 - Estimate?
 - Disability
 - Late 80s saga was never resolved
- ➡ Reduction of interest credited ?

Watch the space !

THE NEW NSSF ACT 2013

Definition of some terms :

• **“TIER II PENSION FUND CREDIT”** in terms of the provisions of section 21(2) means the portion of the Pension Fund Credit, if any, at any particular date equal to the aggregate of the Tier II contributions by and in respect of the member with interest thereon and any transfer payment received in respect of the member with interest thereon;

THE NEW NSSF ACT 2013

OBJECTIVES OF THE NSSF

- **Provide basic social security for members and their dependents;**
- **Increase membership coverage of the scheme;**
- **Improve adequacy of benefits paid out;**
- **Provide full opt-out at Tier II (contributions in respect of pensionable earnings above the Lower Earnings Limit, being statutory monthly basic wage for top urban centres, second tier urban centres and rural areas);**

MEANING IS LOST !

THE NEW NSSF ACT 2013

- **Bring into the ambit of social security self employed persons and their dependants;**
- **Operate and manage a value adding scheme by ensuring the funds are sustainable and affordable and retaining the Old Provident Fund to avoid transferring old liabilities to the new fund; SURE ?**
- **Ensure that the liabilities of the Old Provident Fund are settled within a period of 5 years from commencement; SURE ?**
- **Any other things or measures that would ensure attainment of the objectives and effective enforcement of the Act.**

THE NEW NSSF ACT 2013

Registration of employers and employees

- **Membership to the Fund is mandatory for all persons subject to the Employment Act and who are above 18 but have not attained the pensionable age (60).**
- **Every employer with one or more employees shall register with the Fund and shall register his employee(s).**
- **A register-able employer shall produce proof of registration as a precondition of dealing with or accessing public services;**
- **A self employed person may voluntarily register with the Fund and shall register his employee under a contract of service as a member.**
- **The Fund shall inform employers and employees of the requirements to register.**

THE NEW NSSF ACT 2013

- **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; and**
 - ✓ **failure to comply is an offence.**

→WHAT IS A REGISTER ?

THE NEW NSSF ACT 2013

Mandatory Contributions To The Fund :

- **Each employer must pay to the Pension Fund in respect of each of his employees : employer's contribution at 6% of the employee's monthly pensionable earnings; and employee's contribution at 6% of the employee's monthly pensionable earnings.**

- **Tier I contributions shall be credited to an employee's Tier I Fund Credit and Tier II to an employee's Tier II Fund Credit.**

THE NEW NSSF ACT 2013

Contracting out by employer :

❑An employer may contract out of paying Tier II contributions to a contracted out scheme it has established or opts to establish.

Employer contributions :

❑An employer is only allowed to deduct an employee's contribution from an employee's earnings. Employer contributions must be paid from an employer's resources.

→ WHERE ELSE COULD IT COME FROM ?

THE NEW NSSF ACT 2013

Incorrect Contributions and Opt Out ? ?

- Where contributions are made in error and/or in excess 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.

- No clear guidelines on Appeal procedures in cases where Employer's application to Opt Out is not approved.

→SERIOUS DRAFTING PROBLEMS !!

→WHO IS THE PAYER ?

THE NEW NSSF ACT 2013

CONSEQUENCE OF NON – COMPLIANCE



THE NEW NSSF ACT 2013

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.**

THE NEW NSSF ACT 2013

- **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.**

THE NEW NSSF ACT 2013

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;

THE NEW NSSF ACT 2013

- 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 Contributions i.e. not made within one month after the end of the month in which the contributions fell due - a penalty of 5% of the amount of the contribution for each month or part thereof they remain due.**

THE NEW NSSF ACT 2013

CLARIFICATIONS, DEBATE AND CONFUSIONS

PUBLIC NOTICE

(Standard on Sunday, January 14, 2014)

NEW NSSF MEMBER CONTRIBUTIONS

The National Social Security Fund (NSSF) ACT No. 45 of 2013 was assented on 24 December 2013 with the effective date of commencement being 10 January 2014.

Consequently, employers are advised to make arrangements to submit their contributions in accordance to the new NSSF Act as outlined below.

THE NEW NSSF ACT 2013

COMPUTATION GUIDELINES

For the purpose of the Act, the Upper Earning Limit (UEL) will be KES. 18,000/= while the Lower Earnings Limit (LEL) will be KES 6,000.

The pension contribution will be 12% of the pensionable wages made up of two equal portions of 6% from the employee and 6% from the employer subject to an upper limit of KES 2,160 for employees earning above KES 18,000.

The employee contribution shall be drawn directly from his salary and wages while the employers contribution shall come directly from the employer.

THE NEW NSSF ACT 2013

- **Contributions relating to the earnings below the LEL of the earnings (a maximum of KES. 720 will be credited to what will be known as Tier I account.**
- **The balance from earnings between the LEL and the UEL (up to a maximum of KES 1,440) will be credited to what will be known as Tier II account.**

Sample Computations below for ease of reference :

THE NEW NSSF ACT 2013

Sample Computations are attached below for ease of reference:

Scenario	Earnings	Pensionable Earning	TIER I				Tier II				Total Pension Contribution
			Tier I Earnings	Tier I Employee Deduction	Tier I Employer Contribution	Tire I Total	Tier II Earnings	Tier II Employee Deduction	Tier II Employer Contribution	Tier II Total	
1	3,000	3,000	3,000	180	180	360	-	-	-	-	360
2	4,500	4,500	4,500	270	270	540	-	-	-	-	540
3	6,000	6,000	6,000	360	360	720	-	-	-	-	720
4	10,000	10,000	6,000	360	360	720	4,000	240	240	480	1,200
5	14,000	14,000	6,000	360	360	720	8,000	480	480	960	1,680
6	18,000	18,000	6,000	360	360	720	12,000	720	720	1,440	2,160
7	20,000	18,000	6,000	360	360	720	12,000	720	720	1,440	2,160
8	100,000	18,000	6,000	360	360	720	12,000	720	720	1,440	2,160
9	500,000	18,000	6,000	360	360	720	12,000	720	720	1,440	2,160

The NSSF Act No. 45 of 2013 is available on the official NSSF website www.nssf.or.ke

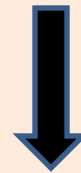
Note : The format of the returns file to be submitted to NSSF and the process of submission will remain the same until guided otherwise

“Standard on Sunday, January 14, 2014”

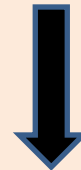
THE NEW NSSF ACT 2013

OLD NSSF SCALE MAX – EMPLOYEE X 2

Pay



$$200 \times \frac{100}{5} = 4,000/=$$



Max. old Monthly
NSSF Kshs.200/=

$$5\% \text{ of Kshs. } 4,000/= = \text{Kshs.200/= p.m. X 2}$$

Erastus & Co.

Certified Public Accountants

THE NEW NSSF ACT 2013

PUBLIC NOTICE OF 22 JANUARY, 2014 – DAILY NATION

Sections of the NSSF Act that have been deferred :

18 – The Old Provident Fund and Other Funds.

- **Registration and membership under the Funds.**
- **Establishment of the pension and provident Fund.**

20 – Mandatory Contributions to the Fund.

- **Rate of contributions under the Fund**

21 – Opting Out by Employer

- **Conditions for Opting Out by Employer**

THE NEW NSSF ACT 2013

IMPLICATIONS OF THE ACT ON BUSINESS, EMPLOYERS AND EMPLOYEES

THE NEW NSSF ACT 2013

- **Income Tax Act – needed amendments on deductible capping from Kshs. 240,000/= per annum to ? ?**
- **Additional costs to employers**
- **Reduced disposable income to employees**
- **Pressure to increase salaries may emerge**
- **Good investment by NSSF will be good for the economy**
- **Dampen inflation due to reduced disposable income**

THE NEW NSSF ACT 2013

How planned law might turn
NSSF into a looters' paradise

“Standard on Sunday, January 14, 2014”

THE NEW NSSF ACT 2013

Government has set
May 30 as new date of
commencement after
lobbying by employers

By JACKSON OKOTH
and RAWLINGS OTIENO

Employers who have been struggling to adjust their payroll systems,

“The Standard, Wednesday, January 22, 2014”

Erastus & Co.

Certified Public Accountants



AUDIT | TAX | ADVISORY

THE NEW NSSF ACT 2013

THE NUMBERS

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”

THE NEW NSSF ACT 2013

THE NUMBERS CONTN...

Sh15b

New levy

This amount is the expected growth in monthly revenue

Sh180b

Collections

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

“Standard on Sunday, January 14, 2014”

**THANK YOU FOR ATTENDING THIS ICPAK SEMINAR
&
FOR SUPPORTING OUR INSTITUTE!**



Erastus & Co., Certified Public Accountants

Morningside Office Park, 2nd Floor Wing B

Ngong Road

P. O. Box 55268 – 00200

Nairobi, Kenya

Tel. : 020 3860521 / 3860524 / 3861120

Mobile Nos. 0722 395611 / 0733 487896

E-mail Address : erastuscpa@kenyaweb.com

Website : www.erastuscpa.com



AUDIT | TAX | ADVISORY