



Budget 2008/9

Presentation to the Retirement Benefits Authority
Mombasa 18 February 2008

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1. Taxation matters

1.1 Tax relief on contributions:

ARBS recommends

- o abolition of monetary limit in favour of *ad valorem* limit
- OR
- o indexation of monetary limit
- o to restore some of lost value, immediate increase from Kshs240,000 to Kshs360,000 pa.



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1. Taxation matters

1.2 Separation of tax relief allowance

- Existing composite relief with employees receiving first bite (ITR 22.A.4)
- This may discourage founders from providing for AVC
- **ARBS recommends** separate relief limits for EE and ER contributions



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1. Taxation matters

1.3 Tax allowances on monthly pensions:

- Last across the board increase in 2004
- Tax-free pensions to over-65s welcome but restriction based on age is difficult to explain to younger pensioners, ill-health retirees
- **ARBS recommends that:**
 - o age restriction be lowered to 55 except for ill-health retirees
 - o tax-free limit on other pensions increase to Kshs360,000
 - o limit for exemption for lump sums be increased to Kshs60,000 per annum subject to max 10 years.



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1. Taxation matters

1.4 VAT exemption for registered schemes:

- VAT is currently levied on all fees paid by schemes
- As schemes are exempt from income/corporation tax it is anomalous that they should bear the burden of VAT
- **ARBS recommends that** professional fees borne by registered schemes should be exempt from VAT



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2. Tax concessions for new listings on NSE

- Value of tax reliefs is an important incentive to listings on NSE
- **ARBS recommends that** the concessionary corporation tax rate be reduced by a further 5% to boost the attractions of listing on NSE



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3. Specific allocations in IPOs

- The retirement benefits industry is a major supplier of investment resources and as such merits a specific allocation in IPOs
- Currently ARBS is treated as among institutional investors
- **ARBS recommends that** the retirement benefits industry be given a specific allocation of 30% in IPOs



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4.1 Assignment of retirement benefits

- This provision was strongly requested by scheme members who are now asking when it will be activated
- There are several reasons to reconsider how it should be implemented
- This is a case where members (and employers and trustees) need to be guided on the risks
- **ARBS recommends that** it be involved throughout the drafting process to assist in ensuring that risks are recognised



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4.2 Early withdrawals from DB schemes

- Regulation 19(5) states that a member of a DB scheme on early leaving may withdraw in cash up to 1/3rd of the actuarially calculated accrued benefit.
- Regulation 25(1)(a) limits commutation of pensions on retirement to 25% for a non-contributory scheme and 33 1/3% for a contributory scheme
- Early withdrawal provision does not reflect this differentiation
- **ARBS recommends that** lump sum early withdrawal from a non-contributory scheme should be consistent with commutation



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4.3 Trusteeship

- The competence etc of trustees is an area of important concern and training by RBA and other professionals has partly achieved the desired degree of improvement across the board
- The Act and Regulations contain a number of provisions intended to optimise the quality etc of trustees and their performance of their duties
- **ARBS recommends that** a requirement be introduced that every scheme should have at least 1 trustee who is demonstrably independent.



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4.4 Scheme winding-up

4.4.1 Service providers may not be liquidators

- MinFund Reg 8(a) prohibits provider of service during previous 5 years from being appointed liquidator
- In some circumstances the previous administrator etc may have been key to detecting problems and instituting action
- Appointment of someone who knows the scheme may be cost-effective
- **ARBS recommends that** the blanket prohibition be removed and RBA exercise its approval authority on a case by case basis



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4.4 Scheme winding up

4.4.2 Appropriation of surplus

- MinFund Reg 7(4A) states surpluses are to be split between unvested balances to sponsors and investment income to enhance member benefits
- This works well for DC schemes but is not appropriate for DB schemes where the benefits are defined and the sponsors carry the funding risk
- **ARBS recommends that** this Regulation be amended to recognise the differences between DC and DB schemes



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4.5 Trust Fund for untraced beneficiaries

- The principle underlying the establishment of this trust fund is to protect assets and beneficiaries from protracted winding up and costs
- While the principle is a function of the regulators, the proposed practice does not seem so
- **ARBS recommends that** the most appropriate solution is closer supervision of winding up



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5. Retirement benefits levy

- The ad valorem levy is still a bone of contention with many scheme trustees and members – even though it is now capped at Kshs5million
- The value purchased by the levy in enhancing awareness and governance are clear
- ARBS has ambitious industry-wide goals and these cannot be financed by modest membership
- **ARBS recommends that:**
 - o the rate of the levy be reduced by 10%; and/or
 - o RBA assist with funding ARBS' education and development programmes; and/or
 - o rebates of levy be granted



6. Investment Guidelines – Offshore

- NSE remains a fairly small albeit growing market
- asset diversification opportunities are limited
- the growth in retirement benefits investment resources has outpaced growth in investment opportunities
- **ARBS recommends that** the limit for offshore investments be increased to 25%



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7. Insured schemes

- pooled funds operated by insurers are not allowed to invest offshore
- this restriction affects many small insured schemes' opportunities to diversify investments
- **ARBS recommends that** pooled insured funds be allowed to invest offshore



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8. Collective Investment Schemes

- Section 76(1) of CMA's CIS Rules limits property investments to 25% of a CIS portfolio
- this rules out distinct property CISs
- property value inflation has put property ownership, particularly of commercial property, beyond reach of most retirement benefits schemes
- property ownership risks are a deterrent to property investments
- **ARBS recommends that CIS Rules be amended to permit distinct property CISs**



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9. Harmonisation with Income Tax Rules

- the underlying principle should be that scope of Income Tax Rules should be limited to distinct taxation matters
- much progress has been made but there remain some areas of overlap
- **ARBS recommends that** the following Income Tax Rules be deleted or amended as shown:



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9. Harmonisation with Income Tax Rules

Delete:

- Rules 4(d) and 5(d) covering surpluses in DC Pension Schemes and Provident Funds
- Rule 4(e) covering surpluses in DB Pension Schemes
- Rule 4(f) covering minimum retirement age
- Rules 4(g) and 4(h) covering dependants' benefits
- Rules 4(i), 5(f) and 6(j) covering vesting of benefits
- Rules 4(k) and 5(h) covering reserve funds



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9. Harmonisation with Income Tax Rules

Delete:

- Rules 5(e) and 6(c) covering composition of a retirement benefits fund
- Rule 6(d) covering investment in qualifying assets
- Rule 6(e) covering loans from a scheme
- Rule 6(f) covering transfers
- Rule 6(g) and (h) covering withdrawals
- Rule 6(i) covering disbursement of death benefits



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9. Harmonisation with Income Tax Rules

Amend:

- Rules 4(j) and 5(g) covering audits and treatment of surpluses



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