

Statutory Instrument No. 147 of 2022

INCOME TAX ACT
(Cap. 52:01)

INCOME TAX (SUPERANNUATION FUNDS) REGULATIONS, 2022
(Published on 11th November, 2022)

ARRANGEMENT OF REGULATIONS

REGULATION

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IN EXERCISE of the powers conferred on the Minister of Finance by section 145 of the Income Tax Act, the following Regulations are hereby made —

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| <p>1. These Regulations may be cited as the Income Tax (Superannuation Funds) Regulations, 2022.</p> | Citation |
| <p>2. An “approved superannuation fund or scheme” means a fund or a scheme, as the case may be, that meets the following criteria and has been approved by the Commissioner General —</p> <p>(a) the Fund shall be licensed as a retirement fund or retirement annuity fund under the Retirement Funds Act and shall be a legal person whose assets are separate from the assets of any employer or any member of the Fund;</p> <p>(b) the scheme shall be established as a retirement annuity or deferred annuity scheme, established and administered by an insurer in terms of the Insurance Industry Act;</p> <p>(c) any annuities purchased by a retirement annuity fund shall, unless it is purchased from itself or from a pension fund registered under the Retirement Funds Act, be purchased from an insurer under the Insurance Industry Act;</p> <p>(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;</p> <p>(e) the rules for a fund or scheme may —</p> <p style="margin-left: 20px;">(i) allow a member to commute up to 50 per cent of his or her pension on retirement;</p> <p style="margin-left: 20px;">(ii) provide for the payment of the total death benefit in cash (inclusive of any funeral benefit) to the dependants or estate of a member in the proportions specified under subparagraph (iv);</p> <p style="margin-left: 20px;">(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 her or on his or her behalf together with any return on the investment of such contributions;</p> | <p>Definition of approved superannuation fund</p> <p>Cap. 27:03</p> <p>Cap. 46:01</p> |

- (iv) provide for the payment of a widow 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, so however, that the total benefits paid shall not exceed 100 per cent of such deceased member's pension;
- (v) allow a member to withdraw from a fund, for reasons other than retrenchment, to commute the equivalent of 25 per cent of his or her pension entitlement or P 25, 000, whichever is the greater, so however, that the total benefits shall not exceed 100 per cent of such member's entitlement. If the residual amount of the member's pension entitlement after commutation is less than P 20,000, 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 or her pension entitlement or P25 000.00, 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 P20 000.00, such residual may be encashed in full:

Provided that the withdrawal benefits payable in terms of subparagraph (v) and this subparagraph 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 with the necessary modifications to an employee re-joining a fund of which he or she was previously a member;

- (vii) where the pension to a pensioner, a widow, widower, orphan or dependent is less than P20 000.00 per annum, provide for the commutation of the entirety of such pension to a single lump sum payment; and
- (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 a "occupational fund or scheme"), the employee may with the consent of the employer, retire at any time after he or she reaches the age of 45:

Provided that the retirement ages for any specific class of employees not included under this provision shall be regulated in terms of the applicable Acts.

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3. Botswana Unified Revenue Service shall approve the amendment or replacement of the fund rules, if it is satisfied that the amendment or replacement is consistent with the Income Tax Act and its regulations and any other laws.

4. The Income Tax (Superannuation Funds) Regulations, 2001 are hereby revoked.

MADE this 25th day of October, 2022.

PEGGY SERAME,
Minister of Finance.