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# **Pension Lawyers Association**

## **Appeal Cases Update and Surplus Queries Seminar**

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**Taxation and SARS Practices  
GN29 and Related Issues**

**Ron Dicks**

**Alexander Forbes**

# Topics

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- GN 29
  - ◆ general discussion
  - ◆ active members
  - ◆ employer
  - ◆ former members
  - ◆ accrual
  - ◆ employer contributions
- Case study and other considerations

# GN 29

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- SARS GN Notes
- Not law
- Guidance or interpretation
- Income Tax Act
- General Matters

## GN 29

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- Distribution to active and deferred members
  - enhance a member's benefit within the fund
  - no tax implications
  - no receipt or accrual
  - enhanced withdrawal, retirement or death benefit

# GN 29

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- Distribution to employer
  - first distribute to employer surplus account
  - no tax implications
  - payment to employer only on fund liquidation or to prevent job losses
  - cash payment taxable

# GN 29

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- Distribution to former members  
(withdrew, retired or died)
- General principles
  - surplus distributions not in consequence of withdrawal, retirement or death
  - own event for tax purposes

# GN 29

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- Distribution to former members
  - who withdrew before surplus apportionment
    - lump sums taxed in terms of the 2<sup>nd</sup> Schedule
    - surplus distribution taxable
    - no deduction in terms of the 2<sup>nd</sup> Schedule
    - no transfers to preservation funds

# GN 29

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- Distribution to former members (cont)
  - Who retired before surplus apportionment
  - pension fund
    - increased or bonus pension at marginal tax rates
    - outsourced pensions
  - provident fund
    - lump sum taxable in terms of the 2<sup>nd</sup> Schedule
    - surplus distribution paid as a lump sum
    - no deduction in terms of the 2<sup>nd</sup> Schedule

# GN 29

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- Distribution to former members (cont)
  - Who died
    - former members who died before surplus apportionment
    - former members who died after surplus apportionment
      - death benefit
      - lump sum taxable under 2nd schedule with appropriate deductions

# GN 29

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- Date of accrual
  - on unconditional entitlement to surplus
  - approval by Registrar of surplus apportionment scheme
- Employer contributions to meet deficit
  - past improper use
  - Contribution allowed as a deduction
  - Section 11 (I) limitations
- Enhancements (RF1/95)
- Tax directives

# GN 29

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- Para (a) and (b) pension funds?
  - funds established by or in terms of law
  - GEPF or local authority funds
  - unique tax consequences
  - separate GN Note to be issued