On point

Pensions focus: Third -Tier Pension Scheme finally takes off

The National Pensions Regulatory Authority (NPRA) in a news release on 16 March 2012 issued notices on the implementation of the Three-Tier Pension scheme (which was introduced in conjunction with the National Pensions Act 2008 (Act 766). This edition of on point is the first of a 3 part series dedicated to reviewing the implications and the associated tax considerations of implementing the 3rd-tier scheme. In this first part, we will focus on individual contributors and pension fund managers while our second and third parts will discuss licensed corporate trustees and registered pension fundcustodians.

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Issues covered in the NPRA notices

In fulfillment of the promise made by the NPRA to approve the list of trustees, custodians and fund managers and to ensure that funds are transferredto the approved trustees accounts by 30 March 2012, the NPRA has announced the following:

1. Nine companies have been approved and licensed to operate as corporate trustees. Corporate trustees are companies licensed by the NPRA to acts as trustees;

2. Twenty nine companies have been approved and registered to operate as pension fund managers. A pension fund manager is a person that manages an investment fund within a pension scheme which is intended to accumulate during an individual's working life with the intention of providing income in retirement; and

3. Seven banks have been approved and registered to operate as pension fund custodians. A registered custodian is a person whose business it is to keep custody of cash, securities and documents of title to assets belonging to others.

Tax implications for individual contributors

Prior to the licensing of the fund managers, 3rd-tier contributions made by employees to respective pension funds were expected to be taxed at the time of the contribution, In practice however, some organisations opted to take advantage of a full tax deduction for the contributions even when the NPRA had not released the list of approved fund managers.

Having now approved and released the list of licenced pension fund managers, employee and employer 3rd-tier contributions of up to 16.5% of the employee's monthly income to an approved fund manager is exempt from tax.

All contributions made to a 3rd-tier approved pension fund manager in excess of 16.5% of an employee's monthly income are taxable on the employee and the employer (i.e. the employer's portion is not tax deductible).

Hence employees may enjoy a full tax deduction for the total amount of their contributions provided it does not exceed 16.5% of their monthly income.

Also, where employees withdraw contributions madeto a 3rd-tier fund manager after achieving mandatory retirement or after ten years of the contribution, the accrued benefits are not subject to income taxes.

Any withdrawals of contributions priorto reaching retirement or 10-year maturity period will result in the income taxes being imposed on the amount withdrawn.

Legal ramifications for and tax status of licenced fund managers

For most entities, in the period before the licensing of fund managers, contributions were either managed by internal or employer-approved fund managers or investment banking entities recognised to have the expertise to manage pension and provident fund contributions.

Currently, given that the NPRA has appointed fund managers, entities that continue to have their funds managed internally or by unapprovedpension fund manager would contravene section 120 of the National Pensions Act, 2008 (Act 766) ("NPA") which stipulates that "*occupational pension schemes, provident fund schemes, personal pension schemes and other privately-managed pension schemes* ***shall*** *only be managed by trustees approved by the Board"*.

Going forward, in order to comply with this requirement, entities must ensure that their pension fund managers are part of the list of approved fund managers, steps must be taken to migrate to any of the provident fund managers approved by the NPRA.

Tax implications for fund managers

The final release of the list of NPRA approved pensionfund managers is a welcome relief for fund managers that were uncertain of the outcome of their applications.

Section 112 (4) of the NPA provides that "*investment income including capital gains from the investment of scheme funds shall for the purposes of income tax, be treated as deductible income"*. For these purposes, investment includes any process by which contributions and net income are used to increase the value of the pension assets such as cash deposits, purchase and sale of stocks, fixed interest stocks, properties and other authorized investments.

This means that income fund managers make from their investments including capital gains would not be taxable. This is further supported by the provisions of section 61 of the Internal Revenue Act, 2000 (Act 592) as amended ("IRA") which exempts the income of a retirement fund from tax once it is exempted by another enactment, which in this case is the NPA.

Further, in accordance with section 10 of the IRA, dividends or interest payments received by a fund manager from an investment in a venture capital financing company, an approved unit trust scheme or mutual funds will be exempt from tax.

In any other case, i.e. where the income is not attributable to investment and not expressly exempt from income tax under the IRA, then such income may be deemed as the business income of the fund manager which is subject to a standard corporate rate of 25% (fund managers listed on the Ghana Stock Exchange may be subject to a reduced income tax rate).

Available publications

Copies of the following publications are available to be sent to you upon request:

- 2011 Ghana Tax Facts and Figures
- 2012 Ghana Budget Highlights
- Top Ten Tax issues in Ghana's Oil and Gas Sector
- Oil and Gas Matters Newsletter
- Quick Guide to Setting up in Ghana.
- PwC Ghana's Oil and Gas capability statement
- PwC Ghana's Mining capability statement
- On point publications on:
  - transfer pricing
  - recent tax amendments

To contact us further in relation to this publication or any of the issues discussed in this newsletter, please use the following contact details below:

Tax Leader

Darcy White
+233 (302) 761576
+233 (243) 171453
Darcy.white@gh.pwc.com

Tax Partner

George Kwatia
+233 (302) 761500
+233 (244) 603798
George.kwatia@gh.pwc.com

Tax Senior Managers

Ayesha Bedwei
+233 (302) 761500
+233 (244) 813956
Ayesha.a.bedwei@gh.pwc.com

Nana Afua Okoh
+233 (302) 761500
+233 (207) 619191
Nana.a.okoh@gh.pwc.com

Lydia Pwadura
+233 (302) 761500
+233 (244) 603 276
Lydia.pwadura@gh.pwc.com

Company Secretarial Services

Francis Adiasani (Director)
+233 (302) 761500
+233 (244) 667350
Francis.adiasani@gh.pwc.com

Michael Klobodu (Manager)
+233 (302) 761500
+233 (208) 256507
Michael.klobodu@gh.pwc.com

OFFICE LOCATION:	No. 12 Airport City Una Home 3rd Floor Accra, Ghana	Plot No. 51 Airport Ridge Takoradi
MAILING ADDRESS:	PMB CT42, Cantonments Accra, Ghana	
TELEPHONE:	+233 302761500	
FASCIMILE:	+233 302761544	
E-MAIL:	pwc.ghana@gh.pwc.com	
WEBSITE:	www.pwc.com/gh	