KAPLAN&STRATTON
NEWSLETTER

Mandatory NSSF Contributions – NSSF Act, 2013

The Court of Appeal has, by a judgment delivered on 3rd February 2023, upheld the mandatory contributions to the NSSF (the State Scheme) as prescribed in the NSSF Act, 2013. While this is to be implemented with immediate effect, we are aware that the judgement is being challenged at the Supreme Court.

Some important highlights in respect of the mandatory contributions are as follows: -

The contributions are categorized as Tier I and Tier II contributions.

(a) The rate for Tier I contributions is 6% of an employee's pensionable earnings up to a maximum of the Lower Earnings Limit (*as defined in the Act),* currently a maximum of Kshs. 6,000/- per month. This results in a maximum contribution of Kshs. 360/- per month and applies to the employee and employer. The Tier I contribution in respect of the employee and employer must be paid to NSSF.

(b) The Tier II contribution rate is 6% of an employee's pensionable earnings up to a maximum of the Upper Earnings Limit *(as defined in the Act*), currently set at Kshs. 18,000, but to be reviewed annually for each financial year based on National Average Earnings (*also defined in the Act*), the effect of which will be an upward adjustment of the monthly contributions. The maximum Tier II contributions will be KES 720 per month calculated at the rate of 6% of KES 12,000 (being Upper Earnings Limit of KES 18,000, less the Lower Earnings Limit of KES 6,000). This applies to both employee and employer contributions and gives a maximum total contribution of Kshs. 1,440 per month. Tier II contributions are also payable to the NSSF except where the Retirement Benefits Authority (RBA) has, through a contracting-out process, given approval for such contributions to be paid into a registered retirement benefits scheme.

The Tier I and II contributions are calculated on all emoluments excluding “fluctuating emoluments”, which are defined as earnings additional to basic wage or salary not paid on a fixed basis. Examples of such emoluments are given in the regulations.

The NSSF Act, 2013 contains provisions for contracting-out of NSSF with respect to Tier II contributions (both employee and employer) and for such contributions to be remitted to a registered retirement benefits scheme, which has legally contracted out of NSSF for that purpose. An elaborate procedure for contracting-out, including the requirements of an application to the RBA for eligibility and approval, is set out in the NSSF Act and regulations.

K&S is available to guide any employer who may wish to contract-out or opt-out of the NSSF and remit Tier II contributions to a registered retirement benefits scheme instead of NSSF. We would also be pleased to assist in addressing any other legal concerns that may rise in the implementation of the NSSF Act, 2013.

In case of any queries, please contact
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