

Dashboard

Legal Updates

Edition 2 | February 2024

Interest on the late payment of contributions – some questions

There are two questions that require clarity about the payment of interest by an employer when it has paid contributions late or is in arrears. The two questions are:

1. **From which day is late payment interest calculated on contributions payable by the employer: the 1st of the month, or the 8th of the month?**
2. **Does the *in duplum* rule apply to the amount of interest payable by an employer on late contributions?**

There have been different views expressed on the answers to these questions. The Office of the Pension Funds Adjudicator (OPFA) on 5 February 2024 issued Communication 1 of 2024 dealing with these two questions.

1. **From which day is late payment interest calculated on contributions payable by the employer: the 1st of the month, or the 8th of the month?**

[Dashboard 4, 2023](#) provided information related to this question, but the issue continued to gather steam.

What is the date of calculation of penalty interest?

In terms of the Pension Funds Act and Conduct Standard 1 of 2022, interest is payable by the employer on arrear / late contributions. This interest is calculated from the first day following the expiration of the period contributions were payable for until the fund receives the contributions - at the prime rate plus 2%.

There is confusion about whether the penalty interest starts to run from the 1st day of the next month or the 8th day of the next month.

The FSCA's view

The Financial Sector Conduct Authority (FSCA) provided its view in Communication 15 of 2023 (RF), where it stated that:

Contributions must be paid not later than seven days after the end of the month for which the contribution is payable. The FSCA's view is that interest must be calculated from the day after the 7th day, that is the **8th day**. This continues to be the view of the FSCA.

The OPFA's view

The OPFA, in Communication 1 of 2024, set out a different view to the FSCA's, stating that penalty interest is payable/calculated from the 1st day of the next month.

Example

ABC Company is paying contributions for May 2023. These contributions must be paid into the retirement fund's bank account by the 7th of June 2023 by the latest. ABC does not pay the contributions by the 7th of June 2023.

FSCA's view: the interest payable on these arrear contributions will then run from the 8th of June.

OPFA's view: the interest payable on these arrear contributions will then run from the 1st of June.

The way forward

The FSCA and OPFA will be meeting to discuss this difference of opinion and the FSCA is considering whether to issue an Interpretation Ruling on the matter. In the meantime, different administrators and funds may be taking different views.

NMG has been calculating interest from the 8th of the month for all funds that it administers. Following the view from the OPFA, this will be changed to be the 1st day of the next month.

2. Does the *in duplum* rule apply to the amount of interest payable by an employer on late contributions?

What is the *in duplum* rule?

The rule means that the interest on a debt can't exceed the unpaid balance of the principal debt (common law principle).

Example, if the *in duplum* rule applies to arrear contributions:

Unpaid contributions = R10 000

Statutory interest (prescribed by the Pension Funds Act and Conduct Standard) continues to add up while the contributions remain unpaid, but the interest will be limited to R10 000.

Recent case

In the recent High Court case of *Municipal Workers Retirement Fund v Umzimkhulu Local Municipality and Others* the High Court found that the *in duplum* rule does not apply to the interest prescribed in the Pension Funds Act for arrear contributions. Therefore, the employer had to pay the full amount of statutory interest owing to the fund.

Even though this case was decided before the Conduct Standard, the Conduct Standard interest requirement is based on the provisions of the Pension Funds Act and thus, the case appears to be applicable notwithstanding the Conduct Standard.

The FSCA's and OPFA's views

Before the case, both the FSCA and the OPFA were of the view that the *in duplum* rule applied to arrear contributions. However, since the case, both the FSCA and the OPFA have confirmed that, given the above-mentioned High Court case, they are both of the view that the *in duplum* rule does not apply to arrear contributions. This means that the interest on arrear contributions (payable by an employer) can exceed the original contribution amount owed by the employer. This is good news for funds and members and bad news for employers.

NMG's position

NMG currently does not apply the *in duplum* rule to arrear contributions when calculating interest on arrear contributions.

¹ In *DA Cruz v Bernardo* 2022 (2) SA 185 (GJ) at p186 it is stated: 'The *in duplum* rule broadly speaking, provided that arrear interest ceased to accrue once the sum of the unpaid interest equalled the amount of the outstanding capital.'

² (11458/2015) [2023] ZAKZPHC 80 (10 August 2023)



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info@nmg.co.za

[\(+27\) 011 509 3000](tel:+270115093000)

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