

## Voluntary Pension Contribution

### Arresting the tax leakage from withdrawals?

According to William A. Ward, "Before you retire, save." The Pension Reform Act 2014 ("PRA" or "the Act") and the repealed Pension Reform Act 2004 played a great role in ensuring employers and the employees in Nigeria save for employees' retirement. Employees in Nigeria have further improved their savings culture by contributing above the statutory minimum of 8% of their gross monthly emoluments to their Retirement Savings Account (RSA) in furtherance of Section 4(3) of the Act which provides for voluntary pension contribution (VPC).

While the PRA has been applauded for its wider coverage of organizations and employers covered under the mandatory pension scheme, there are still so many individuals left out of the scheme. For instance the questions persist, what happens to employers with less than 3 employees, Nigerians in foreign employment and foreign nationals in employment in Nigeria? These group of individuals and many others not mentioned are required to join the scheme on their own volition as provided in National Pension Commission (PENCOM) guidelines. Thus, Section 4(3) applies to contributions made by individuals not specifically covered under the mandatory scheme and contributions by employees above the normal statutory limit provided by the Act.

Section 10 of the Act provides that contributions to the scheme under the Act shall form part of tax deductible expenses in the computation of tax payable by an employer or employee under the relevant income tax law.

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In practice, participants in the scheme enjoy the tax relief and thereafter withdraw the principal amount with the tax relief not being reversed or the tax due accounted for. Whatever the general objectives or aspirations of the PRA, it is imperative that individual employees remain able to access their VPC as they deem fit to enable them mitigate their exposure on this portion of their retirement savings on account of the vicissitudes of depreciation or devaluation of the Naira. Accordingly, the consequential question would be: at what point should tax apply, if any and how should the tax be collected and remitted?

It is noteworthy that the Act does not expressly mention that VPC falls under the Scheme. However, certain Sections of the Act may suggest that it falls under the

Scheme. For instance, Section 11(a) of the Act mandates every employee who falls under the Act to maintain an RSA. In the same vein, Section 4(3) permits employees to make VPC to the RSA, which raises a presumption that VPC is part of the Scheme. Further, Section 7(1) provides the criteria for utilization of the amount credited to RSA which covers voluntary contribution.

The withdrawal pattern of the VPC is further made ambiguous by Section 10(4) of the Act which provides that income earned on any VPC will be subject to tax at the point of withdrawal where the withdrawal is made before the end of five (5) years from the date the VPC was made. This may imply the possibility of early withdrawal on VPC, prior to the time stipulated in Section 7 of the Act.

It should be noted that withdrawal from the RSA may not be consummated without the approval of PENCOM, the regulator. This further reinforces the argument of a permissible window for withdrawal of VPC from the holder's RSA before the end of 5 years from the date the VPC was made. Thus, PENCOM has the responsibility to ensure that the income earned on the VPC before withdrawal is subjected to applicable income tax at the point of withdrawal and to ensure the

tax deducted are remitted to the relevant tax authorities.

PENCOM is in the process of issuing guidelines on VPC (draft guidelines), pursuant to its powers under Section 23 of the Act. Further, paragraph 1(vii) of the draft guidelines states that "voluntary contributions in the retirement savings account (RSA) shall not be construed as a deposit savings account but exclusively for the purpose of enhancing future retirement benefits or pensions". It is evident that the current practice of making voluntary contributions into RSA and subsequent unfettered withdrawal of same by individuals raises significant concerns around the application of the provisions of the PRA 2014.

PENCOM should work with the appropriate authorities to develop guidelines for implementing the taxing of withdrawals from the Scheme, without infringing on the rights of individuals to make VPC at will and withdraw at any time. The necessary consultations should be made to address possible administrative challenges with enforcing and collecting tax due on VPC at the point of withdrawal. It should be noted that any guidelines that is inconsistent with the provisions of the law may be challenged.

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