NAPSA Penalty Position

BACKGROUND

The National Pension Scheme act (1996)[1] is an act to establish the National Pension Scheme Authority; to constitute the National Pension Scheme and to provide for matters connected with or incidental to the foregoing. Section 51 and 52 of the Act highlights the offences and penalties under the NPS Act No. 40 of 1996.

They include the following:

Evading payment of contributions (section 51 (1) (a))– This happens when employers do not pay the required social security contributions when required under the Act to do so. It may also include late remittance of contributions. –Section 12 of the NPS Act defines who a contributing employer is and this includes any person, association, Institution, Firm registered as a tax payer with a tax payer with a contract of service with an employee. It also includes the Government of the Republic of Zambia, Local Authority or parastatal or statutory body. The Act also empowers employers to recover from an employee who is a member of the scheme, the amount of contributions from his earnings (Section 14(1) (2).

Failing to register within the period specified (section 51(1) (b) -An employer should apply for registration within one month of commencing business. (Section 13(1)). The period of one month begins on a date when the person/employee/member concerned becomes a contributing employee. Section 13(13) of the NPS Act obligates and empowers a contributing employer to register every person who becomes an employee in his service and also obliges him to provide the particulars of such employees. An employer is required to submit a duly completed Employer Registration Form number NPS 411 and accompanied with Member Registration Forms. As proof of registration, An Employer account number shall be availed in writing.

[1] **National Pension Scheme Act, Ministry of Legal Affairs, 1996**

Failure to furnish information or furnishing False Information (Section 51(1)(c) that is, refusal to give a name or address is categorized as such. Section 15(1) of the NPS Act also obliges contributing employers to submit with all payments, all prescribed supporting particulars concerning employees' earnings.

Obstructing an Inspector, Officer or servant of the Scheme in the discharge of his duties. Section 51(1)(e).The word obstructs includes any act that hinders or interferes or amounts to meddling or hampering the activities of the officers mentioned above in the performance of their duties, that is, refusal to provide identification and giving false names can amount to obstruction.

Failing to produce documents when required to do so without lawful excuse Section 51(1) (f). Section 7(5) of the NPS Act empowers Inspectors to inspect any books pertaining to employee's contributions. Further, Section 15(1) of the NPS Act also obliges contributing employers to submit with all contribution payments, all prescribed supporting particulars concerning employee's earnings.

PENALTIES

Any person who contravenes any of the provisions of the Act is guilty of an offence and liable on conviction to a fine not exceeding 1000 penalty units, or to imprisonment for a term not exceeding three months or to both (Section 51(1)). In addition, the Act provides that the Court may also order such persons so convicted to pay all outstanding contributions and penalties due to the scheme at the date of conviction.

PENALTIES ON UNPAID OR LATE CONTRIBUTIONS AND WHY THEY ARE CHARGED

Section 15(2) of the NPS Act prescribes that penalties will be charged on all late or unpaid contributions. It states as follows:

> *"if any contribution is not paid within the time stated under subsection (1) a sum equal to twenty per centum of the amount unpaid shall be added as a penalty for each month or part thereof after the date the payment is due and the amount of the penalty shall be recoverable as a debt owing to the Scheme by the employer"*

The foregoing section prescribes that a **20% cumulative penalty** shall be charged on all unpaid or late contributions.

This penalty is charged on two major grounds:

It is compensation to NAPSA for the lost investment gains which would have been made and eventually passed on the pensioner. At the time of retirement, the pensioner will have to be paid as though the money was received in the month it was deducted/due irrespective of whether NAPSA received it on time or not.

In order to make it possible for such good payments to be sustained, NAPSA needs to invest all the funds received and to do so on time. Any delays may result in a situation where NAPSA's obligations may outweigh its capacity to pay. According to NAPSA, the penalty acts as compensation for the lost investment earnings. The most obvious reason it is charged is because the Act prescribes it as a penal measure to deter would-be defaulters from doing so.

BUSINESS COMPLIANCE

Many SME's struggle with compliance to the statutory obligations under NAPSA. Excluding many formal businesses, Low compliance levels manifest in the difficult-to-reach groups. Even when new businesses do register, there is a likely risk that the targeted groups will merely register but remain non-compliant in terms of remitting contributions. This problem cannot be solved by penal measures alone. Whilst the penal measures are law, there are also a stumbling block to expanding compliance especially among the informal sector who do not have as much information on social security.

EXTENSION OF COVERAGE TO INFORMAL SECTOR

The Authority[2] faces a number of obstacles in extending social security coverage to the informal sector. Key among them include:

1. Huge information gap that exists between the Scheme and the informal sector groups:
    - Where the employer/employee relationship exists, some employers are unaware of their legal obligation of registering and remitting contributions for their employees. Some employees also do not know of their right to social security and thus do not demand for registration by their employers
    - Some employers are not aware of the advantages that accrue to them by ensuring that their employees are provided with social security coverage e.g. high morale and enhanced productivity.
    - Most employees in the informal sector lack knowledge about the benefits that NAPSA pays out to its contributing members, rather they consider NAPSA contributions as another form of government tax as opposed to a saving or investment.
    - Some of the informal sector players have wrong perceptions that NAPSA is just for the formally employed, thus they think they are not eligible to join the scheme.

[2]**Extension of coverage to the informal sector International Social Security Association, 2017**

2. The NPS Act was designed in such a way that it focuses more on the formally employed people, thereby creating challenges to bring on board members from the informal sector.

3. Lack of innovative products tailored to informal sector players. Before the introduction of eNAPSA (the web-based portal for filling of returns and payment of contributions) all employers were required to physically visit a NAPSA office to register as an employer, register their workers and remit monthly contributions. The manual processes therefore, discouraged many employers especially those of domestic workers and other lowly paid employees as often the transaction cost was more than the payable monthly contribution. Furthermore, the inconvenience of leaving their businesses or workplaces to pay monthly contributions discouraged many as this would result in loss of business. For employers engaged in formal employment, the difficulty of requesting for permission from their superiors on a monthly basis to go and file returns for their domestic workers prevented them from complying with the law.

4. Lack of short and long term incentives (other than pension) to attract some sections of the informal sector players. The stated challenges thus inhibit the Scheme's ability to on-board new members from the informal sector groupings.

GOING FORWARD

There is great scope for NAPSA to Leverage on partnerships with key stakeholders like sector associations that represent the interests of particular sector groups in the extension of coverage. ZACCI is the umbrella private sector association representing the business interest of many businesses small, medium and large. Understanding the complexity of the problem at hand will require some robust dialogue between businesses and the authority in order to address to strike a balance between the penal measures and compliance.