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NEWSLETTER

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WE WISH YOU A VERY HAPPY XMAS AND A PROSPEROUS NEW YEAR

Website change: Take notice that my website has been moved to *www.robertjkoch.net.* With ".net" at the end, not ".com".

Newsletters by email: By reason of the high cost of postages we will be discontining postal delivery of newsletters after the March 2009 newsletter. In order to be assured of ongoing receipt of the newsletter by email please go to my website *www.robertjkoch.net* and login your details, including your email address.

Salary increases: In his most recent address to the Reserve Bank on 18 September 2008 Tito Mboweni reported that:

> "The trend of wage settlements has become an increasing risk to the inflation outlook. Nominal wage settlements have been increasing over the past year, although they are still on average below the inflation rate, particularly once productivity changes are adjusted for."

In all western economies increased productivity due to improved work techniques and technology has given rise to real increases in average wages over the last 100 years, at least. This has been about 1% to 2% per year above the rate of inflation. Salary survey results for the corporate sector (see page 103 of the *Quantum Yearbook* 2008) reveal real compound increases of 1% to 2% per year for the bands C and D but with zero real increases for the semi-skilled B band. A proper analysis of the unskilled A band was not possible due to mixed categories at the very low levels. This phenomenon of real productivity increases is well known to the economists who advise the labour unions. Thus Government has agreed to grant civil servants annual increases of CPIX+1% quite apart from real notch increases. The minimum wages for domestic workers and farm workers is increased by CPIX+2% each year. Minimum wage settlements in 2007 for many industrial councils (building, catering, etc) were about 8% in 2007 compared to CPIX inflation of 6,5%.

South African actuaries capitalise future earnings using net capitalisation rates of 2,5% to 2,73% per year. This is supposed to reflect the difference between annual earnings increases and the notional investment return. The "productivity" factor suggests that net capitalisation rates of about 1% per year may be more appropriate. In England several years ago a commission of inquiry recommended a net capitalisation rate of 3,5% per year for capitalising claims for personal injury and death. The Chancellor of the Exchequer eventually legislated that 2,5% per year be used having regard to the likely persistence of real productivity increases in future years. All these real increases can only be justified if there is a corresponding increase in productivity. If there is no improvement in work output then the apparent real earnings increases will merely serve to drive up the inflation rate and negate any apparent real gains. The last 5 years in South Africa have seen unusually low headline inflation which has had a low level of credibility for the man in the street (and the mother in the supermarket). A big chunk of the real increases we are seeing right now may

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be no more than catch up on the credibility gap, and not destined to last in the middle and long term.

Mora interest: The legal rate of interest has been 15,5% per year simple for so many years that it has largely ceased to be relevant when the rate was last changed. 15,5% is a very high rate indeed, so it is a very good investment to have someone owing you money on which *mora* interest is running. To what extent income tax should be paid on such interest I have yet to discover. There is an ancient *duplum* rule which restricts the accumulation of interest in commercial transactions to no more than the original debt. However, *mora* interest is not subject to this rule (*Meyer v Catwalk Investments* 2004 6 SA 107 (T); *De Vries (obo Rawoot) v Minister of Safety and Security* (c) (unreported case 16058/92 31.10.2006)). *Mora* interest does not run against the Road Accident Fund by reason of a section in the RAF acts which states that interest shall not begin to run until 14 days after determination of quantum. However, for non RAF claims for personal injury or death mora interest does run, but only on past losses. *Mora* interest for the period prior to date of determination of the quantum does not run on general damages nor on future losses capitalised to a current date. The Prescribed Rate of Interest Act states that mora interest runs from the "date of demand": This is generally considered to be the date of service of summons, but could, arguably, be taken to be the date of delivery of a letter of demand. The court apprised of the matter has a discretion to order that *mora* interest run from the date of the injury or death at a rate considered appropriate by the court. In the *Rawoot* case (supra) the Court ordered that *mora* interest run from the date of the injury but only at the rate of past inflation. Effect was given to this by calculating past loss taking the notional rate of earnings at the date of trial and simply multiplying it by the number of years of past loss of earnings.

Value of an inheritance: In *Mohan v RAF* 2008 5 SA 305 (N), a claim for loss of support arising from the death of her husband, the widow had inherited rental property, ie property which she did not live in, and a deduction was to be made for the accelerated value of this accrual. The Court ordered that the date-of-delict rule be applied and value of the property be fixed at the date of the death and that no regard be taken for the much increased value thereof at the date of the trial. The authority cited for this decision (*Philip Robinson Motors v NM Dada* 1975 2 SA 420 (A) at 429H) was a case concerning damages for breach of contract, and thus, strictly speaking, not relevant to a claim for loss of support. In claims for damages for personal injury and death a court will normally have regard to supervening events, thereby more accurately to determine the true loss (*Wigham v British Traders Insurance* 1963 3 SA 151 (W) 156C). Thus in *Santam v Meredith* 1990 4 SA 265 (Tk) the widow had inherited the deceased's business. She had not the skill to run it and so by the time of the trial it no longer had any value. The Court ordered that a nil deduction be made for the accelerated value of the business. In *Searle v Guardian National Insurance* 1996 (T) (unreported 11.10.96 case 5772/95), however, it was ruled that when calculating the deduction for acceleration no regard may be had to escalation in the value of the inherited assets after the date of the death.

Actuaries called upon to calculate the deduction for acceleration do their calculations on the assumption that the value of the asset inherited would have escalated in line with inflation during the lifetime of the deceased, had he lived. Consistency with the actuarial approach requires that value be taken as at the date of the trial. Or have actuaries got it wrong, and should do their calculations assuming nil increase in value after date of death?

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