

# **ROBERT J KOCH** cc BSc LLB LLD

**Fellow of the Faculty of Actuaries in Scotland**

VAT 4870191808

E-mail: rjkactuary@gmail.com

CK2000/058266/23

Website: www.robertjkoch.net

4 Myrtle Street

Gardens Cape Town

Tel: 021-4624160

PO Box 15613

Vlaeberg 8018

Fax: 021-4624109

Alternative fax numbers: 021-4613752 or 086-5137615 or 086-2316017

## **NEWSLETTER**

(Number 91 – December 2014)

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

#### **Vital statistics:**

CAP determination October 2014:	R227400
CPI year-on-year October 2014:	5,9%
RSA long bond yield May 2014:	7,7%
Real rate of return (7,7 less 5,9):	1,8%
ABSA Property Index August 2014:	6,4%
Houses less than 140 square meters:	8,5%

**Prescribed rate of interest:** The prescribed rate of interest has been a whopping 15,5% per year since 1 October 1993. 21 years later someone in the Department of Justice has finally noticed the anomaly: Since 1 August 2014 the rate has been reduced to a more realistic 9% per year (GG37831 18 July 2014). The standard calculation is simple interest. The rate applicable to a claim is fixed at the rate in force at the time that summons is issued. Interest runs from “date of demand”. Subsequent rate changes are ignored. A court has a wide discretion to order whatever rate and method of calculation it considers reasonable, including compound interest. The “duplum rule” does not apply to mora interest (*Meyer v Catwalk Investments* 2004 6 SA 107 (T); *De Vries (obo Rawoot) v Minister of Safety & Security* (C) (unreported 31.10.2006 case 16058/92)).

**Foster care grants are now deductible:** In *RAF v Coughlan* 702/13 [2014] ZASCA 106 it was ruled that foster care grants are deductible, thereby overruling *Makhuvela v RAF* 2010 1 SA 29 (GSJ). Child welfare grants and State disability grants have been previously deductible (*RAF v Timis* 2010 (SCA) (unreported 26.03.2010 case 29/2009); *Indrani and Another v African Guarantee and Indemnity* 1968 4 SA 606 (D); *Zysset v Santam Ltd* 1996 (1) SA 273 (C) at 278A-279C). An *obiter dictum* in the *Timis* judgment has led some practitioners to conclude that disability grants and child welfare grants in payment prior to the accident should be ignored. It is doubtful that the Court intended that result (see my Newsletter 88 June 2013).

**Civil service salary increases:** Government employees have received the following cost-of-living increases over the last few years:

6,2% from 01/07/2004; 4,6% from 01/07/2005; 5,3% from 01/07/2006;  
7,5% from 01/07/2007; 10,5% from 01/07/2008; 11,5% from 01/07/2009;  
7,5% from 01/07/2010; 6,8% from 01/05/2011; 7,0% from 01/05/2012;  
6,6% from 01/04/2013; 7,4% from 01/04/2014.

Teachers get an additional guaranteed 1% notch increase (and may get more if performance is above average). Housing subsidies have fluctuated around R6000 per year since July 2004; from July 2010 there was an increase to R9600 per year; and from May 2012 to R10800 per year. The medical aid subsidy has for many years remained fixed at R12168 per year (some staff get larger subsidies for reasons that are unclear). The pension subsidy is 13% of the basic salary; the employee contributes a further 7,5%. There is a guaranteed 13th cheque equal to the monthly salary.

**CPI/CPIX confusion:** From January 2009 StatsSA changed the basket so that what had previously been known as “CPIX” became published as “CPI”. The main difference between the two is that the post-2009 CPI excludes the effects of house mortgage bond payments. The new CPI is thus a more realistic indicator of basic living costs. There is a general practice for many minimum wage determinations to be done using CPI+1% (sometimes 2%). In developed countries where productivity is on the increase due to improved education and technology the average wage has for many years increased at 1% or 2% per year above the rate of inflation. There are some doubts that South Africa’s trade-union and employment-equity driven wage structures correctly reflect underlying improvements in productivity, if any. In other words the productivity needed to justify the wage levels does not exist. The beleaguered clothing industry is a notable exception, with wages driven down by foreign imports. For senior personnel with the ability to skip overseas the overseas remuneration levels will impact on local levels.

**Accrual benefits:** In a marriage under the accrual system the gains by the partners are redistributed on death or divorce according to a formula set out in the Matrimonial Property Act 88 of 1984. The formula provides for the declared net assets of each spouse to be inflated to date of dissolution using the Consumer Price Index. The excess gain by one spouse is then transferred to the other spouse. However, what happens if both parties have incurred losses? That is to say that both have less net assets at the end of the marriage than when they started. The Act seems to be silent on this issue. My own hunch is that there is nil transfer between the estates. I appeal to my readers to submit their own opinions.

**Deduction of investment interest:** A lump-sum collateral benefit is normally deducted without a further deduction for the interest that might have been earned on that benefit. In *Muller v Mutual and Federal Insurance* 1993 4 C&B J2-56 (C) the claimant had borrowed money to pay for his medical expenses. The Court ruled that the associated overdraft interest could not be claimed as damages. The Assessment of Damages Act 9 of 1969 states that “no (insurance or pension money) may be taken into account”. The RAF has taken to arguing that although the lump-sum benefit may not be deducted the interest earned on that benefit should nonetheless be deducted. This is a remarkable argument bearing in mind that if the benefit had been deductible the associated interest would not have been deductible. It also deserves consideration that the words not “taken into account” imply “treated as though it does not exist”. The Act does not say “not deducted”. In any event the amount of interest that is in issue is usually not a very large amount.