

An interpretation of s 17(4) of the Road Accident Fund Act

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Section 17(4) of the Road Accident Fund Act 56 of 1996 imposes a limit on the annual loss of a claimant. In particular, s 17(4)(c) provides that where a claim for compensation includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding R160 000 per year in the case of a claim for loss of income and R160 000 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support. Section 17(4A)(a) provides for the annual loss to be adjusted quarterly in order to counter the effect of

inflation. Section 17(4A)(b) provides that in respect of any claim for loss of income or support the annual loss limits shall be the amounts set out in the last notice issued prior to the date on which the cause of action arose. Of vital importance is the interpretation of what is meant by 'loss'. An interpretation of loss is that this is the loss in each future year in present money terms. In particular, given a certain gross amount of income, the loss is calculated by first deducting taxation, then multiplying the resultant net income with the chances of the claimant surviving to each future year, multiplied by

a discount factor (that takes into account the net effect of investing the capital award and the effects of salary inflation – the so-called net discount rate or real rate of interest) and further adjusted by general contingency deductions.

Set out in the table, is a practical example of the calculation envisaged. In the example below, the loss of income for a 30-year old male who earned R 400 000 per annum in self-employment and who would have retired at age 65 is illustrated. Taxation has been deducted using the 2010/2011 tax tables assuming that the average rate of taxation will remain constant in future, the chances of survival of the claimant are determined using Life Table 2 of Koch The Quantum Yearbook (Port Elizabeth: Van Zyl, Rudd & Associates 2010) and a net discount rate of 2,5% has been assumed. Finally a general contingency deduction of 15% is illustrated. It is assumed that the claimant is totally unemployable post-accident. A calculation date of 1 May 2010 has been adopted (it is assumed that the accident occurred on 30 April 2010) and it is assumed that the annual loss limit is the current loss limit of R 178 642 per annum (effective up to 30 April 2010). The total net loss of income without the imposition of the loss is R5 679 457; whereas the net loss with the imposition of the annual loss limit is R5 148 831. In this particular example, approximately 90,7% of the claimant's loss is covered. It is interesting to note that from age 30 to age 43, the claimant's salary of R400 000 is not covered in full in present money terms. However, from the age of 44 onwards the full salary is covered in present money terms.

Changing income to R600 000 per annum, alternatively R800 000 per annum or alternatively R1 000 000 per annum in the same example above; would result in an estimated coverage from the Road Accident Fund of the total net loss of respectively 73,6%, 60,3% and 50,3%.

However, a case could be made out for assuming a certain rate of savings during the years when the full salary is not covered and shifting these savings to later years to increase the use of the loss limit in those years. This is certainly a sound argument for a self-employed individual. With an estimated 3,7% of the total working population earning more than R300 000 per annum ('A special report on South Africa' 2010 June *The Economist* 3); it is doubted whether the proposed legislation will result in much of a cost saving to the Road Accident Fund.

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Age	Gross taxable income	Tax on that income	Net income after tax	Chances of survival in future	Discount factor	Present value of loss	Net present loss (p.a.)	Covered by the new Act
30	400 000	93 640	306 360	0,99892	0,98773	302 274	256 933	178 642
31	400 000	93 640	306 360	0,99675	0,96364	294 261	250 122	178 642
32	400 000	93 640	306 360	0,99454	0,94014	286 448	243 480	178 642
33	400 000	93 640	306 360	0,99227	0,91721	278 824	237 001	178 642
34	400 000	93 640	306 360	0,98993	0,89483	271 382	230 675	178 642
35	400 000	93 640	306 360	0,98751	0,87301	264 114	224 497	178 642
36	400 000	93 640	306 360	0,98497	0,85172	257 011	218 459	178 642
37	400 000	93 640	306 360	0,98231	0,83094	250 065	212 555	178 642
38	400 000	93 640	306 360	0,97950	0,81068	243 267	206 777	178 642
39	400 000	93 640	306 360	0,97651	0,79090	236 609	201 118	178 642
40	400 000	93 640	306 360	0,97331	0,77161	230 082	195 570	178 642
41	400 000	93 640	306 360	0,96987	0,75279	223 677	190 126	178 642
42	400 000	93 640	306 360	0,96616	0,73443	217 387	184 779	178 642
43	400 000	93 640	306 360	0,96215	0,71652	211 204	179 523	178 642
44	400 000	93 640	306 360	0,95779	0,69904	205 118	174 351	174 351
45	400 000	93 640	306 360	0,95304	0,68199	199 125	169 256	169 256
46	400 000	93 640	306 360	0,94787	0,66536	193 214	164 232	164 232
47	400 000	93 640	306 360	0,94222	0,64913	187 377	159 271	159 271
48	400 000	93 640	306 360	0,93603	0,63330	181 607	154 366	154 366
49	400 000	93 640	306 360	0,92925	0,61785	175 894	149 510	149 510
50	400 000	93 640	306 360	0,92181	0,60278	170 229	144 695	144 695
51	400 000	93 640	306 360	0,91364	0,58808	164 606	139 915	139 915
52	400 000	93 640	306 360	0,90468	0,57374	159 017	135 164	135 164
53	400 000	93 640	306 360	0,89486	0,55974	153 453	130 435	130 435
54	400 000	93 640	306 360	0,88411	0,54609	147 911	125 725	125 725
55	400 000	93 640	306 360	0,87235	0,53277	142 385	121 027	121 027
56	400 000	93 640	306 360	0,85954	0,51978	136 872	116 342	116 342
57	400 000	93 640	306 360	0,84562	0,50710	131 371	111 665	111 665
58	400 000	93 640	306 360	0,83054	0,49473	125 882	107 000	107 000
59	400 000	93 640	306 360	0,81427	0,48267	120 406	102 345	102 345
60	400 000	93 640	306 360	0,79679	0,47089	114 947	97 705	97 705
61	400 000	93 640	306 360	0,77807	0,45941	109 509	93 082	93 082
62	400 000	93 640	306 360	0,75810	0,44820	104 096	88 482	88 482
63	400 000	93 640	306 360	0,73689	0,43727	98 715	83 908	83 908
64	400 000	93 640	306 360	0,71444	0,42661	93 374	79 368	79 368