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Revenue Laws Amendment Bill, 2023

REVENUE LAWS AMENDMENT BILL, 2023

National Treasury released the long-awaited second draft of the Revenue Laws Amendment Bill, 2023, on 9 June 2023 for comment. This Bill, which will apply to all the types of retirement funds (namely pension funds, provident funds, preservation funds and retirement annuity funds (other than so-called legacy retirement annuity funds)) introduces what has become commonly referred to as the "Two Pot" system and will allow members partial access to their retirement benefits as a cash payment whilst in employment with the quid pro quo of requiring preservation of part of their benefits to retirement.

SUMMARY

In summary the Bill proposes that:

- The Two Pot system will be effective from 1 March 2024.
- Members will be permitted to access 10% (with a maximum of R25 000) of the accrued benefits in their retirement funds on 1 March 2024.
- Members may access one-third of the retirement contributions to their retirement funds after 1 March 2024, plus the investment return on those contributions.
- Any amount taken in cash must be at least R2 000 and only one cash withdrawal may be taken in each tax year.
- Two-thirds of members' retirement contributions after 1 March 2024, plus the investment return on those contributions, must be used to purchase an annuity on retirement and must be preserved in the retirement system on withdrawal prior to retirement.
- The balance of members' benefits accrued to 1 March 2024 will be "vested" and retain the same rights on retirement and withdrawal as applied before 1 March 2024.
- Any amounts taken in cash whilst still in employment will be taxed as income in the hands of the member.

The Bill appears to contain a number of inconsistencies and omissions, which will hopefully be clarified by National Treasury.

It is important to note that the Bill is still in draft form released for comment (which must be submitted to National Treasury by 15 July 2023) and any of the provisions may still change.

All defined contribution funds will be required to hold three pots (renamed as "components" in the Bill) which are defined in the Bill in respect of each member, namely:

Vested Pot: The member's accumulated benefit in the retirement fund as at 1 March 2024, less a 10% transfer (with a maximum of R25 000) to the Savings Pot, plus investment return thereon

Savings Pot: The 10% transfer (maximum R25 000) from the Vested Pot plus one-third of the member's retirement contributions after 1 March 2024, plus investment return thereon

Retirement Pot: Two-thirds of the member's retirement contributions after 1 March 2024, plus investment return thereon

Retirement contributions, for the purposes of the Savings Pot and the Retirement Pot, are defined as:

Member contributions (including additional voluntary contributions) + Employer contributions – Risk benefit premiums – Administration expenses

Example:

Four members of a retirement fund have accrued benefits in their fund on 1 March 2024 of R20 000, R200 000, R750 000 and R2 000 000, respectively. On 1 March 2024, their various pots will be as follows:

	Member 1	***Member 2***	***Member 3***	***Member 4***
Vested pot [1]	*R18 000*	*R180 000*	*R725 000*	*R1 975 000*
Savings Pot [2]	*R2 000*	*R20 000*	*R25 000*	*R25 000*
Retirement Pot	*R0*	*R0*	*R0*	*R0*
Total benefit	***R20 000***	***R200 000***	***R750 000***	***R2 000 000***

1 *Total benefit less the amount transferred to the Savings Pot*

2 *10% of the total benefit, with a maximum of R25 000, transferred to the Savings Pot*

The legislation effective 1 March 2021 aligning the retirement benefits of pension and provident funds remains in place. Under that legislation, provident fund members are required to annuitise at least two-thirds of their benefits on retirement, subject to the following protected rights:

Provident fund members under age 55 on 1 March 2021: Their accumulated benefits at 1 March 2021, plus investment return thereon, may be taken in cash on retirement.

Provident Fund members over age 55 on 1 March 2021: Their accumulated benefits at 1 March 2021 and their future contributions after 1 March 2021 to the same provident fund, plus investment return on both amounts, may be taken in cash on retirement. In terms of the Bill, such members shall:

- Contribute after 1 March 2024, as for other members, to a Savings Pot and a Retirement Pot, with permissible cash payments from the Savings Pot whilst in employment, but their Retirement Pot (if greater than the de minimis limit of R165 000) will have to be annuitised on retirement; unless they elect to
- Continue their contributions after 1 March 2024 to their Vested Lump Sum Pot (see below), in which case they will not have a Savings Pot (or a Retirement Pot) and will not be able to take a cash payment whilst in employment.

Tracking the various amounts in respect of these "annuitisation" provisions and protected rights will require administrators to split the Vested Pot into two further Pots, namely (our naming convention):

Vested Lump Sum Pot: The accumulated amount as at 1 March 2024 for current and former provident fund members which may be taken in cash on retirement

Vested Annuity Pot: The accumulated amount as at 1 March 2024 for current and former provident fund members which must be treated as a "pension benefit" on retirement, i.e. a maximum of one-third may be taken in cash and the balance must be used to purchase an annuity

It is not clear in the Bill how the initial 10% transfer (maximum of R25 000) from the Vested Pot to the Savings Pot will be funded where a member has both a Vested Lump Sum Pot and a Vested Annuity Pot, but we have assumed for the purposes of this Note, that it is funded pro rata from the two pots.

Taking protected rights into account, the "Two Pot" system will actually be administered as four pots (although most pension fund members will not have any benefits in their Vested Lump Sum Pot). The four pots that must be managed for each member are as follows:

Vested Lump Sum Pot	**Vested Annuity Pot**	**Savings Pot**	**Retirement Pot**
			
Accumulated benefit at 1 March 2024,less pro rata portion of 10% transfer (max R25 000) to Savings Pot, plus investment return thereon, which may be taken in cash at retirement	*Accumulated benefit at 1 March 2024, less pro rata portion of 10% transfer (max R25 000) to Savings Pot, plus investment return thereon, of which at least $2/3^{rds}$ must be used to purchase an annuity at retirement*	*Initial 10% transfer (max R25 000) from Vested Lump Sum Pot and Vested Annuity Pot plus $1/3^{rd}$ of retirement contributions after 1 March 2024, plus investment return thereon*	*$2/3^{rds}$ of retirement contributions after 1 March 2024, plus investment return thereon*

When a benefit is paid to a member, each pot needs to be considered separately in terms of the conditions that apply to that pot and the taxation basis if the pot can be paid out. The conditions that can apply are as follows:

Cash	**Preserve**	**Annuitise**
		
Cash payment permitted	*Benefit must be preserved (i.e. cannot be paid out)*	*Benefit must be used to purchase an annuity*

CASH PAYMENT WHILST IN EMPLOYMENT

From 1 March 2024 members may, subject to various conditions, request payment of part of, or all of, the balance in their Savings Pot without leaving employment.

Vested Lump Sum Pot	**Vested Annuity Pot**	**Savings Pot**	**Retirement Pot**
			
Cannot be accessed	*Cannot be accessed*	*May be taken in cash* *Minimum R2 000* *Only one payment in each tax year* *Taxed as income*	*Cannot be accessed*

Example:

A member has a Savings Pot of R15 000 on 15 May 2024 and the member requests a payment of R10 000, leaving R5 000 in his/her Savings Pot. If tax of, say, R1 500 and an administration fee of, say, R300, are deducted from the payment, the member will receive R8 200. The Savings Pot will continue to grow with investment return and further contributions, but the member cannot receive another payment until 1 March 2025 (the start of the next tax year) at the earliest.

Resignation from Employment (including dismissal)

Vested Lump Sum Pot	Vested Annuity Pot	Savings Pot	Retirement Pot
			
May be taken in cash or preserved in current fund or transferred to another fund	*May be taken in cash preserved in current fund or transferred to another fund*	*May be taken in cash (providing members has not already taken a cash withdrawal in that tax year), preserved in current fund or transferred to another fund*	*Must be preserved in current fund or transferred to another fund*
Combined vested benefit taken in cash taxed per withdrawal scale	*Combined vested benefit taken in cash taxed per withdrawal scale*	*Benefit taken in cash taxed as income*	*No tax on preservation or transfer*

Retirement from Employment (including ill-health/disability retirement)

Vested Lump Sum Pot	Vested Annuity Pot	Savings Pot	Retirement Pot
			
May be taken in cash or used to purchase an annuity	*Maximum 1/3rd in cash* *Minimum 2/3rds to purchase an annuity (subject to a de minimis limit including the Retirement Pot of R165 000)*	*May be taken in cash or transferred to Retirement Pot*	*Cannot be taken in cash* *Must be used to purchase an annuity (subject to a de minimis limit including the annuitised portion of the Vested Annuity Pot of R165 000)*
Combined cash benefit taxed per retirement lump sum benefit scale	*Combined cash benefit taxed per retirement lump sum benefit scale and combined annuity taxed as income*	*Combined cash benefit taxed per retirement lump sum benefit scale*	*Combined annuity taxed as income*

Death

On death, the member's total benefit in all the Pots is paid in terms of Section 37C and taxed per the lump sum benefit scale.

Transfers to the Retirement Pot and transfers to other funds

Intra-fund transfers: Members are permitted to transfer their Vested Pot (both the Lump Sum and Annuity portions) and their Savings Pot into their Retirement Pot. They cannot transfer any amount out of their Retirement Pot.

Inter-fund transfers: Where any amount is transferred to another fund in terms of Section 14 or on resignation from employment, the amount in each Pot must be transferred to a matching Pot in the new fund (although the Savings Pot and the Vested Pot may be transferred to the Retirement Pot in the member's new fund).

OTHER PROVISIONS

- **Divorce and other section 37D deductions** remain permissible under the Two Pot system. Various restrictions apply on member withdrawals from the Savings Pot if the member is getting divorced or a 37D claim has been instituted against the member.

- The Two Pot system will also apply to **defined benefit funds**, with future service accruals split between the Savings Pot and the Retirement Pot. Similarly, a service split between the Vested Pot and Savings Pot must be made with regard to the 10% transfer (maximum R25 000) to the Savings Pot as at 1 March 2024.

- The Two Pot system will apply to **retirement annuity funds** where member benefits are based on the accumulation of transfers and contributions and investment return only, but will not apply to "legacy" retirement annuity funds which operate on a reversionary bonus system.

- Not dealt with in the Bill is possible (partial) access to the Vested Pot and the Retirement Pot on the **retrenchment** of members. This is mooted to be dealt with in a second phase of the implementation of the Two Pot system.

REVENUE ADMINISTRATION AND PENSION LAWS AMENDMENT BILL, 2023

- The Revenue Administration and Pension Laws Amendment Bill, 2023 confirms that where a court order has been obtained in respect of a **section 37D claim** against a member for theft, dishonesty, fraud or misconduct, it must include an order in terms of section 300 of the Criminal Procedure Act, 1977 before any amount can be paid from the member's benefit to the employer.

- This Bill also requires that the amount allowable in terms of a **housing loan or guarantee** must not exceed 65% of the member's total benefits in all pots at the time such a loan or guarantee is granted.

COMMENT

The Bill, subject to any further changes, will need to go through the parliamentary process before there is certainty on the final format (and effective date) of the Two Pot system. Caution should therefore be exercised in assuming that the proposals in terms of the Bill will come into effect.

The Revenue Administration and Pension Laws Amendment Bill, 2023 makes various required amendments to the Pension Funds Act, but various other Acts, such as the Divorce Act, may need to be amended to give effect to the Two Pot system. Retirement funds will also need to amend their rules appropriately.

Administrators will need to amend their administration systems to allow for the various Pots and put in place processes to deal with a potentially large number of members who try to access their Savings Pots shortly after 1 March 2024.

The Bill does not limit administration fees in respect of cash payments whilst in employment, but it is likely that administrators will charge a fee to make such payments. The fee could form a large proportion of the payment, especially if a member requests a small amount (subject to the prescribed minimum of R2 000).

IF YOU HAVE ANY QUESTIONS OR WOULD LIKE MORE INFORMATION ON HOW THE ABOVE MAY AFFECT YOUR RETIREMENT FUND, PLEASE CONTACT YOUR KEYSTONE CONSULTANT DIRECTLY.

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