

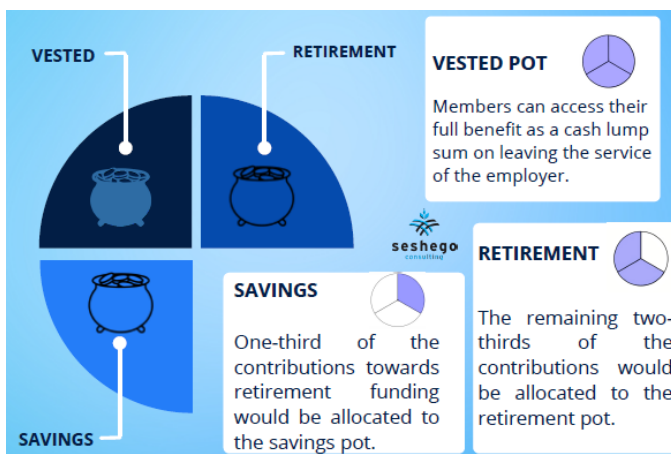
AUGUST 2023: EDITION 6 of 2023

In case you missed it...

1. [July 2023 – Sanlam Benchmark Survey 2023](#)
2. [May 2023 – Draft conduct standards issued by the financial sector conduct](#)
3. [April 2023: Sustainability of Retirement Funds – an Overview](#)
4. [March 2023: Deductions in terms of Section 37D of the PF Act](#)
5. [February 2023: Budget summary 2023/2024 Tax Year](#)

National Treasury issues new legislation on the Two-Component System for retirement funds

On 9 June 2023, National Treasury issued a media statement confirming that a further version of the two-pot draft legislation was available on the National Treasury website. The draft legislation has now been incorporated into two bills, the Draft Revenue Laws Amendment Bill (“RLAB”) and the Draft Revenue Administration and Pension Laws Amendment Bill (“RAPLAB”). Further, the draft legislation changed the name of the proposed regime to the “Two-Component” system but it is still colloquially referred to as “Two-Pot”. The retirement industry has submitted comment on the changes described below and it is important to note that this publication is based on the latest draft legislation. National Treasury may make further changes.



1. Draft Revenue Laws Amendment Bill



1.1 Implementation Date

The implementation date remains 1 March 2024.

The industry is concerned that it will be extremely difficult to have everything in place to implement the system by that date, especially since the final version of the legislation may only be available early in January 2024. The industry has requested National Treasury to consider a 12–18 month lead time.

Funds are required to have rule amendments providing for the changes registered by 1 March 2024. It will be difficult to meet this deadline if the final legislation is issued in January 2024 and the Financial Sector Conduct Authority (“FSCA”) is not currently equipped to deal with the volume of submitted amendments in such a short space of time.



1.2 Seeding from the Vested Component into the Savings Component

The accumulated benefit of members of retirement funds as at 29 February 2024 is known as the “Vested Component”. After 1 March 2024, no further contributions may be made to the Vested Component, except for members of provident funds mentioned under 1.6 below.

After 1 March 2024, one-third of a member’s contributions (exclusive of the cost of risk benefits and administration expenses) will be allocated to the component to be known as the “Savings Component”.

Members will be able to take an annual withdrawal from the Savings Component, subject to certain restrictions.

National Treasury has agreed to allow members to transfer an amount to be known as “Seeding Capital” from the Vested Component into the Savings Component as at 1 March 2024.

The Seeding Capital is equal to the lesser of 10% of a member’s accumulated benefit and R25,000.



In order to manage member expectations, it is important to make members aware of the following:

- The option to withdraw the Seeding Capital is a once-off option. This is because National Treasury is concerned about the impact of withdrawals in March 2024 on the liquidity of the retirement fund;
- If a member of an occupational fund decides to withdraw his Seeding Capital on 2 March 2024, this will constitute his one withdrawal for the year and he will not be able to take a further savings withdrawal benefit;
- Withdrawal of the Seeding Capital will be taxed at marginal rates and an administration fee will be charged on any withdrawals, so the amount eventually paid to the member will be significantly less than R25,000;
- Certain funds may not have sufficient liquid assets to pay out the demand for withdrawals of the Seeding Capital. Members should not be led to expect that the funds will be immediately available on 2 March 2024.



1.3 Savings Withdrawal Benefit

The annual withdrawal amount permissible from the Savings Component is known as the "Savings Withdrawal Benefit". The withdrawal must be a minimum of R2,000 but no maximum amount is specified in the legislation.

The annual withdrawal may be taken at any time during the tax year, which is the year from 1 March until the last day of February in the following year.

However, a member who requests payment of a Savings Withdrawal Benefit of, for example, the R2,000 minimum amount should not expect to receive the full R2,000. After allowing for payment of the administration fee and tax payable at the marginal rate, the member would be lucky to receive R1,400 in his pocket.

There are other restrictions on payment of the Savings Withdrawal Benefit in terms of the proposed amendments to the Pension Funds Act ("the PFA"). [These restrictions are mentioned in greater detail in clause 2 of this publication.](#)



1.4 The Retirement Component

The fund is required to allocate the remaining two-thirds of member contributions (exclusive of the cost of risk benefits and administration expenses) to the component known as the "Retirement Component". The Retirement Component must be preserved in the fund until retirement and then can only be paid out as an annuity.

The de minimis rule still applies. This means that if the combined value of the portion of the Vested Component that must be paid as an annuity and the Retirement Component at retirement is less than R247,500 (or other amount stipulated by SARS from time to time) the full amount may be taken in cash.



1.5 Access to benefits on leaving a fund before retirement

On exit from the fund prior to retirement, those members of retirement funds prior to 1 March 2024 who have values in the Vested Component may take this amount in cash and can still take a Savings Withdrawal Benefit, if they have not previously made use of this facility in the particular year of assessment. Any payment of the Savings Withdrawal Benefit will be taxed at the marginal rate.

These benefits may either be taken as a cash lump sum or the member may elect to transfer his benefit to another occupational fund, or to a preservation fund or a retirement annuity.

The rule of thumb is that when transferring a benefit from one fund to another, a less restrictive component may be moved to a more restrictive component, but a more restrictive component can never be moved to a less restrictive component.

Although the benefit transferred may be split proportionally between the Components the full benefit, comprising all Components must be transferred to the same fund.

For example, a member who leaves service may not elect to transfer his Vested Component to a preservation fund, his Savings Component to a new occupational fund and to leave his Retirement Component in his old occupational fund.



1.6 Members of Provident Funds who were over 55 years as at 1 March 2021

Members of Provident Funds who were over 55 years as at 1 March 2021 and remain members of the same fund will automatically be transferred to the “Two Component” regime, unless they elect otherwise. Since this will mean these members will lose the right to have their full benefit in the provident fund paid to them in cash, funds must communicate with these members to make them aware of the need to make a positive election if they wish the old rules to apply to payment of their retirement benefit.



1.7 Emigration

A member who financially emigrates from South Africa after 1 March 2024 may access the Retirement Component after the expiry of a 3-year period from the date of emigration.

2. Draft Revenue Administration and Pension Laws Amendment Bill (“RAPLAB”)

Inevitably certain sections of the Pension Funds Act, 1956 are affected by the proposals set out in the Draft Revenue Laws Amendment Bill. However, some changes have been made which appear to be unrelated to the implementation of the Two-Component system. The proposed changes discussed below are related to deductions in terms of Section 37D of the Pension Funds Act (“the PFA”).

2.1 No deductions from the Savings Component Permissible

The definition of Savings Component in the draft legislation does not allow for deductions in terms of Section 37D of the PFA. Therefore, any deduction must be made from the Retirement Component and/or the Vested Component.

2.2 Housing Loans

Housing loans are now limited to 65% of the member’s benefit. This is aligned with the change to Regulation 28 made earlier in 2023.

New Section 37D (1) (b) (ii) (bA) provides that if the employer has guaranteed the loan, the employer’s consent is required before a member may be paid a Savings Withdrawal Benefit, unless the fund is satisfied

that the withdrawal would not result in there being insufficient value to repay the loan.

2.3 Definition of Pension Interest and payments to the non-member spouse

A definition of “Pension Interest” has been added to the PFA. In relation to the benefit payable to an active member, Pension Interest is defined as the benefit the member would have received if he had resigned from service on the date of his divorce.

The difficulty is that the only permissible benefit payable on resignation from service is the Vested Component, if applicable, and the Savings Withdrawal Benefit, and then only if a member had not taken a Savings Withdrawal Benefit in the preceding year of assessment.

The new Section 37D (a)(aA) of the RAPLAB requires that a retirement fund may not allow a Savings Withdrawal Benefit to be taken by a member if the retirement fund was aware that a divorce action is pending in respect of the member. This section is problematic since most retirement funds would not be aware that a member was contemplating a divorce. It also makes it possible for an aggrieved non-member spouse to inform the fund of a pending divorce action and indefinitely stall payment of a Savings Withdrawal Benefit to the member.

2.4 Compensation to the Employer in terms of Section 37D (1) (b) (ii) of the PFA.

Section 37D (1) (b) (ii) of the PFA provides for the employer to be compensated for fraud, theft, dishonesty or other dishonest misconduct if the member has admitted liability in writing or if the employer has obtained a court order against the member.

Amendments to the section provide that once the employer has obtained a judgement against the member, the employer’s consent is required before a member may be paid a Savings Withdrawal Benefit.

However, the new Section 37D (1) (b) (ii) (bB) provides that the fund may only withhold payment of a benefit or refuse to permit a member to take a Savings Withdrawal Benefit if a court has granted an order authorising the withholding of the benefit.

Given the delays in the South African judicial system, it may be difficult to obtain a court order allowing the fund to withhold payment.



If the fund may not withhold payment of the benefit, it will have the effect of making the provisions of Section 37D (1) (b) (ii) unenforceable, thereby depriving the employer of the right to protection against the wrongdoing of an employee.

2.5 Payment of Future Maintenance Orders

Section 37D(3)(aB)(bb) of the RALPLAB now contains a proposal that payment for future maintenance orders will be legally enforceable against pension fund organisations from 1 March 2024.

This lays a further burden on administrators since administrative systems are not adapted for this purpose.

Should you have any questions regarding the above, please contact your consultant to assist you.

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