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INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION
Social Transformation Through Sustainable Local Government

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LR CIRCULAR 34 of 2022

19 September 2022

TO: IMATU Regional Managers

Dear Sir/Madam

THE DRAFT REVENUE LAWS AMENDMENT BILL, 2022: PRE-RETIREMENT ACCESS TO RETIREMENT FUND SAVINGS

The above matter has reference.

1. Introduction

National Treasury has published the draft Revenue Laws Amendment Bill, 2022 for public comment. The draft Bill is intended to amend the Income Tax Act in order to make provision for two main features:

- Firstly, it introduces pre-retirement access to retirement fund savings, in terms of which fund members will be able to withdraw one third of savings before retirement.

- Secondly, it provides for compulsory preservation, in terms of which, two thirds of retirement savings will be ringfenced and cannot be accessed, under any circumstances, before retirement.

The public comment period ended on 29 August 2022, and it is indicated in the draft Bill that it is intended to come into effect on 1 March 2023.

The key amendments in the draft Bill are set out herein.

2. Background to the Bill

Under the current retirement fund laws, retirement fund savings are, generally speaking, inaccessible before retirement, and can only be accessed early if a fund member changes jobs.

National treasury identified two problems with the current retirement system:

- There is insufficient preservation of retirement savings before retirement (employees access pension funds when they change jobs); and

- Employees in financial distress cannot access their pension funds in case of emergencies (can only do so by resigning their jobs).

Accordingly, National Treasury was of the view that although retirement savings should be used for their intended purpose, namely retirement, there may be a need to allow for some early access to retirement savings in cases of emergencies. However, this must be balanced with the need to ensure that employees have sufficient financial provision for their retirement.

On 15 December 2021, National Treasury released a discussion paper on Pre-Retirement Access to Retirement Fund Savings for public comment. This paper first introduced the concept of the “two-pot” system which would allow retirement fund members to withdraw part of their savings before retirement during periods of financial distress.

This was followed, on 29 July 2022, with the publication of the draft Revenue Laws Amendment Bill 2022 for public comment. This draft Bill is intended to amend the Income Tax Act to allow for early withdrawals from retirement funds before retirement as well as compulsory preservation of retirement fund savings until retirement.

3. Summary of Relevant Provisions

The provisions of the Bill are designed to:

- Establish an intended implementation date of 1 March 2023;

- Preserve all retirement savings until 28 February 2023 into a vested pot;

- Allow fund members, as from 1 March 2023, to split their retirement savings into a savings pot and a retirement pot;

- Allow fund members to make one early withdrawal from the savings pot per year;

- Ringfence the savings in the retirement pot, to be preserved until retirement; and

- Provide that any early withdrawals will be included in the fund member's taxable income and taxed at the marginal (pay-roll) tax rate.

4. Two Pot / Three Pot System

4.1 Whereas National Treasury refers to a two-pot system in the explanatory memorandum to the draft Bill, a closer reading of the draft Bill shows that there will, in fact, be 3 pots, namely (1) a vested pot, (2) a savings pot, and (3) a retirement pot.

4.2 These three pots will operate, in general terms, as follows:

- Vested pot: Preserves retirement savings accumulated up to 28 February 2023 and cannot be accessed before retirement.
- Savings Pot: 1/3 of savings go into this pot and it can be accessed once a year for early withdrawals.
- Retirement Pot: 2/3 of savings go into this pot and it cannot be accessed until retirement.

4.3 The draft Bill does not have retrospective effect and will only apply as from 1 March 2023. Therefore, the current retirement savings dispensation will remain the same until 28 February 2023, and all accumulated savings up to that point will go in the vested pot. After 1 March 2023, retirement savings can be split into the savings pot and the retirement pot.

4.4 These 3-pot system will apply in all types of retirement funds i.e. pension funds, provident funds, preservation funds or retirement annuity funds.

4.5 This will be further discussed below.

5. The Vested Pot

5.1 All retirement savings up to 28 February 2023 will go into this pot.

5.2 No early withdrawals can be made from this pot. This means that retirement savings accumulated until 28 February 2023, are not accessible for early withdrawals.

5.3 There is however an exception. The retirement savings in pot can still be accessed when a fund member changes jobs.

5.4 As from 1 March 2023, no further contributions can be made into this pot, except for persons who are 55 years and older.

6. The Access Pot / Savings Pot

6.1 This is the pot from which early withdrawals can be made.

6.2 However, this pot will start with a zero balance on 1 March 2023. This means that fund members will first have to put savings into this pot, in order to withdraw from it.

6.3 A maximum of one third of contributions can go into this pot. This 1/3 maximum is however subject to a further maximum of R 350 000.00 or 27% of taxable income, per year. Anything higher will automatically go into the retirement pot.

6.4 The minimum that can be withdrawn from this pot is R 2000.00 and there is no maximum. Therefore all the (1/3) savings in this pot can be taken in a single withdrawal.

[Note: In practice, this means that a fund member will have to save at least R 6000.00 to make an early withdrawal. This is because R 4000.00 (2/3) will go into the retirement pot and R 2000.00 (1/3) can be withdrawn.**]**

6.5 Only one withdrawal per year is allowed. However, the withdrawal can be made at any time during that year.

[Note: In practice, this means that a fund member who withdraws too little, won't be permitted to make another withdrawal in the same year, and will have to wait until the next year to make another withdrawal.**]**

6.6 Withdrawals from this pot can be made without conditions. Fund members will not be required to explain their reasons for making the withdrawal.

6.7 Interest on savings in this pot will also form part of accumulations in this pot from which early withdrawals can be made.

6.8 Upon retirement, the fund member can either withdraw all the savings as a lumpsum or transfer what remains to the retirement pot.

6.9 A fund member can also choose to contribute less than 1/3 of retirement savings into this pot.

6.10 The savings pot is not compulsory. A fund member can opt out of this pot and contribute nothing to it. In such a case, 100% of contributions will go into the retirement pot.

7. The Retirement Pot

7.1 No early withdrawals can be made from this pot before retirement, under any conditions. All retirement savings in this pot must be preserved until retirement.

[Note: This means that fund members will not be able to access this pot when they change jobs.**]**

7.2 This pot will start with a zero balance on 1 March 2023. Two thirds of retirement savings will go into this pot.

7.3 If the fund member opts out of the savings pot, then 100% of contributions will go into the retirement pot.

8. The Proposed Amendments in Summary

8.1 The 3-pots will, in essence, operate as follows:

	28 February 2023	**1 March 2023**	
	Vested Pot	**Savings Pot**	**Retirement Pot**
Opening Balance	All savings accumulated up to 28 February 2023	Zero	Zero
Contributions	None, except for fund members older than 55 on 1 March 2023	**1/3** of contributions Maximum: **R 350 000** or **27%** of taxable income	**2/3** of contributions
Accessibility	No withdrawals prior to retirement. Exception: Can withdraw when changing jobs	Early withdrawals can be made. Minimum: **R 2000.00** Maximum: None	No withdrawals prior to retirement. (No exceptions)
Opt-out	Cannot opt-out.	Can opt-out.	Cannot opt-out.
Investment growth	Investment growth added	Investment growth added	Invested growth added
Upon Retirement	**1/3** can be taken as lump-sum. **2/3** to be paid as monthly annuity subject to R275 000 minimum	Can withdraw full amount as lumpsum; or transfer it to retirement pot	Can take **1/3** as lump-sum. **2/3** to be paid as monthly annuity subject to R275 000 minimum

9. Early Withdrawal Implications

9.1 Early withdrawals from the savings pot will have financial implications that should be given serious consideration.

Tax Implications

9.2 Contributions and investment growth in the savings and retirement pots will remain non-taxable. However, early withdrawals from the savings pot will indeed be taxable.

9.3 Early withdrawals will not be taxed on the retirement tax rate, which is a much lower rate (maximum **36%**). It will, in fact, be taxed on the marginal (pay-roll) tax rate which is a much higher rate (maximum **45%**).

9.4 The way in which it works is that early withdrawal amounts will be included in the fund member's taxable income for the year, meaning that it will be added to the fund member’s salary income, in order to calculate the tax owed. This means that an early withdrawal could potentially push the fund member into a higher income tax bracket.

9.5 Depending on the amount withdrawn, the withdrawal may result in the fund member’s entire salary as well as the early withdrawal being taxed at rates as high as 41% or 45% (worst case scenario). The following tax tables are applicable for the 2022/2023 financial year:

2022 / 2023 Tax year (1 March 2022 – 28 February 2023)		
Annual Income (R)		**Rates & Tax (R)**
1.	1 - 226 000	**18%** of taxable income
2.	226 001 – 353 100	40 680 + **26%** of taxable income above 266 000
3.	353 101 – 488 700	73 726 + **31%** of taxable income above 353 100
4.	488 701 – 641 400	115 762 + **36%** of taxable income above 488 700
5.	641 401 – 817 600	170 734 + **39%** of taxable income above 641 400
6.	817 601 – 1 731 600	239 452 + **41%** of taxable income above 817 600
7.	1 731 601 & above	614 192 + **45%** of taxable income above 1 731 600

9.6 This is to discourage unnecessary early withdrawals.

9.7 The tax implications of early withdrawals should be a major consideration and fund members should obtain financial advice before making early withdrawals.

9.8 However, if the fund member, upon retirement, opts to withdraw funds from the savings pot as a lump sum, it will be taxable as a retirement lumpsum which could result in a tax-free withdrawal of up to R 500 000 upon retirement.

Investment Implications

9.9 Retirement savings is a long-term commitment, and an early withdrawal can leave an irreversible dent in retirement savings.

9.10 A withdrawal from a retirement fund reduces members’ retirement savings, and the fund member will also lose out on investment returns on in the savings pot

9.11 Industry experts warn that fund members should not see the access pot as a day-to-day savings account, it should really be used in the event of an emergency, in desperate times, and as a matter of last resort, when all other options have been exhausted. This is due to the both the investment as well as tax implications.

9.12 In the event that fund members choose to make early withdrawals, they should be encouraged to increase their future retirement savings to replace what has been withdrawn – for example, by increasing their monthly contributions. As a rule of thumb fund members should ensure that their retirement savings can provide an income during retirement that is between 70%-75% of their final salaries before retiring.9.13 It is therefore imperative that fund members obtain sound financial advice before making early withdrawals.

10. Transfers

10.1 Savings in the retirement pot can only be transferred to another retirement pot in another fund.

10.2 Likewise, no transfers can be made into the savings pot, unless they are from another savings pot from another fund.

10.3 The above are subject to the fund rules.

10.4 The draft Bill also provides that retirement pots and savings pots cannot be split between funds. I.e. a fund member cannot have a retirement pot in one fund and a savings pot in another fund.

11. Retirement Fund Rules

11.1 The draft Bill specifically provides that three pot system can only operate if the rules of the fund allows for it.

11.2 The rules of the retirement funds will therefore first have to be amended before the three-pot system can take effect.

12. Legislative Process / Way Forward

12.1 National Treasury has indicated that once the public comment period has ended, the National Treasury will consult with stakeholders through public workshops to discuss the written comments on the draft Bill. Parliament's standing committee of Finance and the Select Committee on Finance are also expected to make similar calls for public comment and convene public hearings on the draft Bill before its formal introduction in Parliament.

12.2 The draft Bill will follow the usual parliamentary process. It will be tabled in the National Assembly and once adopted in that house, it will be transferred to the National Council of Provinces (NCOP) for concurrence and finalisation.

12.3 Once the parliamentary process has been completed, the Bill will be sent to the office the President for enactment. The draft legislation indicates that the Bill is intended to come into effect and implemented on 1 March 2023.

12.4 Industry experts have however warned that the proposed 1 March 2023 implementation date may be unrealistic because fund rules and systems will need to be changed to enable the two-pot system. SARS will also need to create capacity to cater for the new pots and track withdrawals. Moreover, retirement funds are required to train their employees and educate fund members about the reform and its implications. This could mean that the anticipated implementation date may be delayed for another year or more.

13. Disclaimer

13.1 The content of this circular is an overview of the key aspects of the draft Bill, in general terms and is not a comprehensive analysis thereof. Regions are advised to study the draft Bill in full to gain a more in-depth understanding thereof.

13.2 The content of this circular is also provided as general information only. It is not intended as nor does it constitute financial, tax, legal, investment, or other advice. Fund members should contact their retirement funds for specific financial advice.