EFFICIENT | BENEFIT CONSULTING

"TWO-POT" RETIREMENT SYSTEM FOR PUBLIC COMMENT

PREPARED IN CONJUNCTION WITH SOONDER INC

June 2023

Dear Valued Client

The revised 2023 Draft Revenue Laws Amendment Bill and 2023 Draft Revenue Administration and Pension Laws Amendment Bill were published for public comment by the National Treasury and the South African Revenue Service (SARS) on 9 June 2023.

The draft Bills:

- Set out the necessary legislative changes required to implement the initial stage of the "two-pot" retirement system.
- Consider the public comments from the 2022 Draft Revenue Laws Amendment Bill, published on 29 July 2022.

In this newsletter we unpack certain of the stipulations made in the revised 2023 Draft Revenue Laws Amendment Bill, and highlight additions and interpretations compared with the first draft.

The two-pot retirement system will divide all contributions made to retirement funds (from 1 March 2024) into two pots. One-third of the contributions will go into the savings pot/component and members will be able to make one taxable withdrawal a year. Two-thirds will be paid into a vested pot/component, which must be preserved until retirement and used to purchase an annuity.

1. Implementation date of the two-pot retirement system:

The proposed date when the legislative amendments to the two-pot retirement system will take e ect is 1 March 2024.

2. Proposal for seed capital:

This stipulation provides for access by the member of the retirement fund to a portion of the available balance in their retirement fund, on the implementation date of the two-pot retirement system (being 1 March 2024). To limit the adverse e ect on liquidity it is proposed that the seed capital amount is to be calculated at 10% of the benefit accumulated in the vested component, however, this is limited to R25 000 – whichever is the lesser. An important consideration is that when a member withdraws seed capital from the fund, the amount will be subject to normal tax rates.

3. Legislative amendments to include defined benefit funds in an equitable manner:

Defined benefit funds calculate the benefits owed to a member, upon retirement, using a specific formula. These funds will be required to calculate the one-third contribution to the savings pot based on one-third of the member's pensionable service increase. The two-thirds contribution to the vested pot will similarly be calculated based on two-thirds of the member's pensionable service increase with e ect from 1 March 2024. Following on from that, seed capital will be calculated using the above methodology and can be accommodated with a past service adjustment.

4. Treatment of legacy retirement annuity funds:
The inclusion of legacy fund policies in the two-pot system will necessitate a change in the design of these historically acquired legacy fund policies. It is proposed that changes be made to the revised draft build to make provision for the exception of legacy retirement annuity fund policies from the regulations of the two-pot retirement system.

5. Transfers from the savings pot to the retirement pot:
These transfers will be allowed in the same fund at any time and they will be tax-free; however tax-directives will have to be applied for. In the Draft Explanatory Memorandum, the ability to a ect both inter- and intra-fund transfers being subject to the fund obtaining a tax directive is specifically stated, however, the wording in the draft of the Revenue Laws Amendment Bill does not support this.

6. Withdrawal from the savings pot:
Withdrawals from the savings pot will be limited to once per tax year. When a member resigns from employment there will be an additional withdrawal allowed, provided the amount in savings is less than R2 000.

7. Proposed changes to the Pension Fund Act:
A withdrawal from a savings pot may be refused unless a fund is satisfied that the withdrawal will not compromise the fund's ability to make section 37D deductions.

8. Section 37D claims:
Changes suggested to section 37D include the provision that employer damages claims may be deducted when a member's employment with an employer terminates. A fund will only be able to withhold a member's benefit if a court has granted an order authorising it. When deductions are made, it must be done proportionally from the respective pots.

9. Housing loans:
It is proposed that the amount of a housing loan be capped at 65% of a member's available benefit, including all pots, in line with Regulation 28. The conditions for providing home loans may be prescribed by the FSCA.

10. Maintenance orders:
Amounts payable in terms of an interim maintenance order can qualify as a deduction. Maintenance amounts have to be paid for by the fund as directed in the court's order and this must be done either as a lump sum in respect of arrear maintenance or in monthly instalments in respect of future maintenance orders. However, a fund may prevent a member withdrawal from the savings pot where there is a maintenance order in place. Similarly, a fund may also refuse withdrawal where it is aware than an action to a maintenance order is pending.

11. Divorce orders:
The portion allocated to the non-member spouse will accrue with the fund starting only from the date of the divorce. Pension interest is also introduced for paid-up members and pensioners, which indicates the regulator's aim that for as long as the benefit is held by the fund, it will make payment to the non-member spouse.

12. Provident Fund members older than 55 years on 1 March 2021:
Members of provident funds who were 55 years and older on 1 March 2021 can choose to participate in the two-pot system. Those not opting for the two-pot system will not have the savings and retirement components.

ANTICIPATED CHANGES AND OPPORTUNITY FOR COMMENT:
The 2023 Draft Revenue Administration and Pension Laws Amendment Bill contains subsequent legislative amendments to the Pension Fund Act, 1956 (Act No. 24 of 1956) to ensure the smooth implementation and administration of the two-pot retirement system.

Chapter 4 of the 2023 Budget review sets out that legislative changes dealing with withdrawals from the vested component if a member of the fund is retrenched and has no alternative income, will be considered in the second phase of the "two-pot" system. Additionally, complementary measures may be considered in the second phase to ensure that the primary objectives of saving for retirement are not compromised. Members of funds should be encouraged to use the withdrawal option only as a last resort and to try their best to preserve their savings for when they do retire.

The date for public comments to be submitted is close of business on 15 July 2023. These comments can be submitted to:
The National Treasury's depository at: 2023AnnexCProp@treasury.gov.za
SARS at: acollins@sars.go.za.

If you have any questions, please contact:

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