NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

DRAFT EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 2024

21 FEBRUARY 2024

[W.P. – '24]

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1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1 TWO-POTS RETIREMENT SYSTEM

[Applicable provisions: Definitions of “legacy retirement annuity policy”, “member’s interest in the retirement component”, “member’s interest in the savings component”, “member’s interest in the vested component”, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund, retirement component, retirement interest, savings component and vested component, paragraph 2 and paragraph 6B of the Second Schedule, paragraphs 2 and 9 of the Fourth Schedule to the Income Tax Act, No. 58 of 1962 (“the Act”)]

I. Background

In 2023, Government proposed a further reform to the retirement saving regime to introduce the so-called “two-pots” retirement system from 1 September 2024. In terms of this reform, retirement savings will be split into a “vested component”, “savings component” and “retirement component”. In summary it is envisaged that:

i. The “vested component” will be made up of retirement savings on 31 August 2024. It was proposed that the regime makes provision for the creation of once-off seed capital, calculated as ten per cent of the “vested component” or R30 000, whichever is the lowest, to be allocated from the retirement savings to the new “savings component”.

ii. From 1 September 2024:

   a. retirement contributions will be split into two, with one third of the contributions going to the “savings component” and two-thirds going to the “retirement component”;

   b. members will be able withdraw funds allocated to the “savings component” once every tax year should they need to, for example, in the case of financial distress or emergency. The minimum withdrawal amount is R2 000 and will be taxed at marginal income tax rates.

   c. The two-thirds which will be allocated to the “retirement component” will be required to be preserved until retirement (i.e. withdrawals from this component will be triggered by the member reaching normal retirement age per the fund rules).

The 2023 amendments to the retirement saving regime proposed the introduction of tax-free transfers between components as well as the introduction of paragraph 6B of the Second Schedule to the Act, dealing with these transfers wherein, members are allowed to make intra-fund transfers at any time and these transfers will be treated as tax-free transfers and be subject to the fund obtaining a tax directive.

The 2023 amendments allow for section 37D deductions, as outlined in the Pension Funds Act of 1956, against the savings, vested, and retirement components. However, it is worth noting that while section 37D deductions are typically taxed under paragraph 2(1)(*b*) of the Second Schedule to the Act, an exception exists for maintenance awards, which are taxed under section 7(11) of the Act, specifically in respect of a maintenance awards ordered by a court under the Maintenance Act of 1998.

II. Reasons for change

Despite the changes made in 2023 to enhance the two-pot regime, it has become apparent that further adjustments are necessary to clarify the existing language. For instance, there is a need to explicitly exclude maintenance awards, which are taxed under section 7(11) of the Act, from the three components mentioned above.

In order to simplify the directives system for both administrators and SARS and cater for speedy implementation of this reform, the requirement to obtain a directive when transferring the seeding amount from the “vested component” to the “savings component” is not necessary as tax is only imposed on withdrawal from the “savings component”.

III. Proposal

A. Technical considerations

It is proposed that:

- various drafting changes be implemented to enhance clarity and precision in the wording.
- The definitions of the three components be amended to exclude maintenance awards that are taxed under section 7(11) of the Act.

B. Intra-fund transfers and directives

It is proposed that reallocations of amounts between the three components not be treated as transfers and that the requirement to obtain a directive for reallocations between the three components be withdrawn.

IV. Effective date

The proposed amendments will come into effect on 1 September 2024.