# Legal Report

**August 2024**

## 1. Corrections to the Two-pot legislation

To make provision for the Two-pot system, amendments have been made to the Income Tax Act and the Pension Funds Act, which will come into effect on 1 September 2024. The amendments to the Income Tax Act however contain certain errors, as well as aspects which are not in accordance with National Treasury's intention, and to remedy these, further amendments to the Income Tax Act are proposed in the Draft Revenue Laws Amendment Bill.

Although the Revenue Laws Amendment Bill will only be enacted sometime after the implementation of the Two-pot system on 1 September 2024, the amendments as proposed in the Bill will apply retrospectively from 1 September 2024. This places retirement funds and their administrators in a very difficult position as the amendments are still being consulted on, and the exact extent and impact of the amendments are accordingly not yet known.

## 2. The application of the Two-pot system to defined benefit funds

In terms of the definitions of "retirement component" and "savings component" in the Income Tax Act, in the case of defined benefit funds, the contributions to these components are to be determined with reference to the member's pensionable service as contemplated in the rules of the fund. It is further stipulated that a fund that is unable to allocate contributions as aforesaid may allocate contributions utilising a reasonable method of allocation as approved by the Financial Sector Conduct Authority (FSCA).

Pursuant to the above, the FSCA has published FSCA Communication 27 of 2024 (RF), the purpose of which is to communicate to the retirement funds industry:

- the preferred approach which will be considered best practice when applying the Two-pot system to defined benefit members; and
- the need for approval of alternate methods of allocation of contributions.

Any fund that is unable to allocate contributions according to the principles as set out in the Communication, may allocate contributions utilising a reasonable method of allocation, which method must be approved by the FSCA. An application in this regard must be submitted in writing to the FSCA, with a motivation as to why the fund is unable to allocate contributions as set out in the communication.

## 3. Draft Taxation Laws Amendment Bill, 2024

The Draft Taxation Laws Amendment Bill, 2024 has been published for public comment. From a retirement fund perspective, the following is of note.

With effect from 1 March 2024, paragraph 6A of the Second Schedule to the Income Tax Act makes provision, in respect of transfers on or after normal retirement age, for a tax deduction in respect of involuntary transfers from a pension fund or provident fund to another pension fund or provident fund. There is an anomaly in the sense that tax-free transfers under the aforementioned circumstances are allowed for involuntary transfers from a pension fund or provident fund to another pension fund or provident fund, but not for involuntary transfers from a retirement annuity fund to another retirement annuity fund. To address this anomaly, it is proposed that the Income Tax Act be amended to make provision for a tax-free transfer from a retirement annuity fund to another retirement annuity fund under the aforementioned circumstances.

The proposed amendment will come into operation on 1 March 2025 and apply in respect of years of assessment commencing on or after that date.

## 4. Exemption from regulation 28 non-compliance reporting for the second quarter of 2024

The Financial Sector Conduct Authority (FSCA) on 2 April 2024 published FSCA Prudential Standard 1 of 2024 with regard to the regulation 28 quarterly reporting requirements for retirement funds. The FSCA has now published an exemption notice, in terms of which funds are exempted from the Prudential Standard in respect of reporting non-compliance with, or breaches in terms of, regulation 28 of the Pension Funds Act for the second quarter of 2024, in other words 1 April to 30 June 2024.

Funds will therefore not be required to submit a regulation 28 report in respect of the second quarter of 2024. Reporting in terms of the Prudential Standard will thus only commence in the third quarter of 2024 (1 July to 30 September), meaning that regulation 28 reports for the third quarter will be due within 90 days after 30 September 2024.

The reason for the exemption is that some of the forms to be used for the reporting were erroneously not included.

# 5. Conditions for legacy retirement annuity policies to be excluded from the Two-pot system

The Financial Sector Conduct Authority (FSCA) has, in terms of FSCA RF Notice 17 of 2024, published the conditions for legacy retirement annuity policies to be excluded from the Two-pot system.

The relevant retirement annuity fund must, inter alia:

- be able to evidence that the application of the Two-pot system will result in a significant negative impact on the fair value of certain of the members' retirement benefits in the fund;

- be able to evidence that all members are afforded the option to transfer to a different product in the same retirement annuity fund that is subject to the Two-pot system or to a different retirement annuity fund;

- develop a comprehensive communication strategy explaining to all affected members why the fund is acting in the best interest of the members in relying on these conditions to be excluded from the application of the Two-pot system, and the impact this has on the members.

*Retirement funds or other clients requiring more information should not hesitate to contact their consultant.*