

1. New format for regulation 28 quarterly non-compliance reports

The Financial Sector Conduct Authority (FSCA) has on 10 December 2024, in terms of FSCA RF Notice 25 of 2024, prescribed a new format for regulation 28 quarterly non-compliance reports.

The reason for the new format is that it has come to the attention of the FSCA that some items were erroneously excluded from the tables contained in the previous format. The purpose of the new format is to rectify these exclusions, and also to include notes and instructions on the submission of the reports.

Inter alia the following is stated in the above-mentioned notes and instructions:

- Funds are only required to report on non-compliances or breaches in terms of regulation 28 for the relevant quarter and must complete all applicable fields.
- Where funds exceed the regulation 28 limits for reasons other than a change in the fair value or characteristic of an asset, and have not been granted exemption, they are required to complete the non-compliance report on a fund level, issuer/entity level and member level, where applicable.
- Funds are not required to complete the report where:
 - a liquidator has been appointed and such appointment has been approved by the FSCA;
 - a fund has been exempted from liquidation; or
 - a full transfer was approved by the FSCA in terms of section 14 of the Pension Funds Act.



2. Amendments 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 came into effect on 1 September 2024. The amendments to the Income Tax Act however contained certain errors, as well as aspects which were not in accordance with National Treasury's intention, and to remedy these, further amendments to the Income Tax Act were made in the Revenue Laws Second Amendment Act, 2024, which was published in the Government Gazette on 24 December 2024.

The amendments are largely of a technical nature and do not have a major impact on the manner in which the Two-pot system must be implemented. There are however certain aspects that are of note, whereunder the following:

- In terms of the previous definitions of “retirement component” and “savings component” in the Income Tax Act, the following funds and members were excluded from the Two-pot system:
 - legacy retirement annuity policies;
 - beneficiary funds;
 - unclaimed benefit funds;
 - pensioners;
 - members of a provident fund or provident preservation fund who were 55 years of age or older on 1 March 2021, unless they have elected to participate in the Two-pot system.

The definitions of “retirement component” and “savings component” have now been amended to also exclude the following from the Two-pot system:

- funds where a liquidator has been appointed before 31 August 2024;
- funds with no member assets immediately before 1 September 2024.
- An unclaimed benefit fund is no longer excluded from the Two-pot system. An exclusion however applies to members to whom an unclaimed benefit, as defined in the Pension Funds Act, is due as at 31 August 2024.
- The definition of “savings component” is amended to make it clear that, on retirement, an annuity can be purchased directly from the savings component. If the member wants to purchase an annuity with the amount in the savings component, it is in other words not necessary to first transfer it to the retirement component.
- If a provident fund member who was 55 or older on 1 March 2021 elects to participate in the Two-pot system, the seeding amount must be based on the value of the member's vested component on the last day of the month in which the election was made.



- The definition of “savings withdrawal benefit” is amended to provide that a member with less than R2 000 in his/her savings component is allowed to withdraw this amount upon exit from the fund, regardless of whether he/she has already made a withdrawal from the savings component during the tax year.
- The Revenue Laws Second Amendment Act also contains the following amendment, which is not two pot related, but which is also important to take note of. Due to a drafting error in the definition of “pension preservation fund”, it was until now only possible to transfer from a pension preservation fund to a pension fund, pension preservation fund, provident preservation fund or retirement annuity fund. It was in other words not possible to transfer from a pension preservation fund to a provident fund. The definition of “pension preservation fund” is amended to also make it possible to transfer from a pension preservation fund to a provident fund. This amendment applies from 1 September 2024.

Despite the above amendments, the Income Tax Act still contains certain provisions which are not in accordance with National Treasury’s intention, especially with regard to provident and provident preservation fund members 55 or older on 1 March 2021. To remedy these, National Treasury has published a further amendment bill. The new bill provides the following with regard to provident and provident preservation fund members 55 or older on 1 March 2021:

- If a member elects to participate in the Two-pot system, the seeding amount must be based on the value of the member's vested component as at 31 August 2024 or the last day of the month in which the election was made, as may be determined in the rules of the fund. A fund can accordingly, with regard to provident and provident preservation fund members 55 or older on 1 March 2021, base the seeding amount on the value of the member's vested component on either of the aforesaid dates, depending on what is stipulated in its rules.
- A member of a provident fund who was 55 or older on 1 March 2021, and is still a member of the same provident fund, is excluded from the Two-pot system. The definitions of “retirement component” and “savings component” are amended to make it clear that the requirement that a member must still be a member of the same fund in order to be excluded from the Two-pot system, does not apply to a member of a provident preservation fund. Unlike the situation that applies in the case of provident fund members, a provident preservation fund member 55 or older on 1 March 2021 is accordingly excluded from the Two-pot system even if he/she is no longer a member of the same fund that he/she was a member of on 1 March 2021. Provident and provident preservation fund members who are excluded from the Two-pot system under the aforesaid circumstances still have the option to participate in the system, in which case they must elect to do so within 12 months of 1 September 2024.



3. Taxation Laws Amendment Act, 2024

The Taxation Laws Amendment Act, 2024 was published in the Government Gazette on 24 December 2024. From a retirement fund perspective, apart from certain technical corrections, the following is of note.

Paragraph 6A of the Second Schedule to the Income Tax Act is amended to make provision, in respect of transfers on or after normal retirement age, for a tax-free transfer from a retirement annuity fund to another retirement annuity fund, irrespective of whether the transfer is voluntary or involuntary.

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

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