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AN UPDATE ON REGULATORY ISSUES FOR RETIREMENT FUNDS

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A. TWO-POT SYSTEM UPDATE

Treasury has presented its updated proposals on the two-pot system to the Standing Committee on Finance. On 1 November 2023, Treasury released the next version of the Revenue Laws Amendment Bill (RLAB), which is the draft Bill that contains the two-pot system legislation.

The RLAB will go to the Select Committee on Finance on 21 November 2023. It is at this stage that there could be some important decisions made as to whether to accept Treasury's two-pot proposals. Recently, Treasury stated in an industry meeting that the RLAB would only be gazetted in 2024.

Part of Treasury's proposals is to move the implementation date of the two-pot system from 1 March 2024 to **1 March 2025** and this date is included throughout the revised RLAB. However, that date is not yet a done deal. It seems extremely unlikely, however, for Government to continue with a 1 March 2024 implementation date if the final legislation is only gazetted next year.

Proposed changes to the two-pot system

The following proposed changes to the two-pot system, among others, have been included in the latest draft of the RLAB:

Seeding

The seeded amount is a once -off event and it is **10% of the vested pot on 28 February 2025, capped at R30 000** (previously R25 000). Treasury stated that it amended the cap as an inflationary adjustment to the R25 000 originally proposed.

It is important for the fund to know whether the seeded amount reduces the compulsory annuitisation non-vested or vested portion of the vested pot. This has been clarified as follows:

For members of provident funds and preservation provident funds under 55 on 1 March 2021: the seeded amount will be come out of the annuitisation vested and non-vested parts of the vested pot proportionately.

For members of provident funds 55 and over on 1 March 2021 (and still members of the same provident fund): these members only have vested amounts in their vested pot, so seeded amounts come out of their vested amounts.

What is "seeding"?
Seeding is the amount of the vested pot (everything built-up in the fund by a member up to 28 February 2025) that transfers into the savings pot on 1 March 2025 and that a member can immediately access in cash, without leaving employment or the fund.

Opt in or opt out?

Members of provident funds who were 55 and older on 1 March 2021 (and still members of the same provident fund)[1] will now be able to *opt into* the two-pot system as opposed to opting out of the two -pot system. So, the default is that these members are out of the two-pot system. This is a reversal of the previous position.

Opting in appears to be a once-off option, but the option does not need to be made by these members on or before 1 March 2025. It could be made at any time. If a decision is made to opt in after 1 March 2025, the seeded amount is still calculated as at 1 March 2025.

Who could be exempted from the two-pot system?

The following entities or persons may be exempted from the two-pot system: a "legacy retirement annuity policy" (in a Retirement Annuity Fund) approved for exemption by the Financial Sector Conduct Authority (FSCA), a beneficiary fund, an unclaimed benefit fund and a fund pensioner.

The tax mechanism for savings withdrawals from the savings pot

The RLAB now contains provisions for the South African Revenue Service (SARS) to issue the fund's administrator with a fixed rate to tax the savings withdrawal. SARS will need to provide more information to the industry as to how this will work in practice

> Savings withdrawals from the savings pot are taxable at the member's marginal rate. This has not changed.

More flexibility for defined benefit funds

More flexibility has been drafted into the RLAB for calculating the one-third/ two third split when contributions are paid into a defined benefit fund. If a defined benefit fund can't do the split based on pensionable service, the RLAB allows for the fund to allocate contributions utilising a reasonable method of allocation, as approved by the FSCA.

How does the two-pot system apply on death?

Treasury's intention is to maintain the status quo in relation to death benefits. So, after the two-pot system is implemented, beneficiaries would still be able to decide to take their whole death benefit allocation either as an annuity or as a cash lump sum.

Section 37D deductions

Deductions related to housing loans/ guarantees, maintenance orders, divorce orders and theft/fraud/dishonesty against the employer can now be made *proportionately from all three pots*, including the savings pot (previously deductions were only permissible from the retirement pot and vested pot).

A non-member spouse's pension interest

When a non-member spouse decides to transfer their pension interest to another fund (after a divorce), it is transferred from the same pot in the transferring fund to the same pot in the receiving fund, or from the vested or savings pot in the transferring fund to the retirement pot in the receiving fund (as decided by the non-member spouse).

B. CONDUCT OF FINANCIAL INSTITUTIONS BILL (COFI)

The State Law Advisors have substantive queries on COFI, necessitating further work. Thus, COFI will not be tabled in 2023.

C. DRAFT INTERPRETATION RULING

As dealt with in a previous edition, the FSCA issued FSCA Communication 20 of 2023 (RF) and a draft Interpretation Ruling intended to replace the current Interpretation Ruling 1 of 2020. This current Interpretation Ruling, which took effect on 25 March 2020, is an interpretation of section 37C of the Act affecting paid-up members, unclaimed benefit members and deferred retirees. The FSCA believes that it made an error in its interpretation of section 37C about *unclaimed benefits* and wants to replace the existing Interpretation Ruling with a revised version.

The FSCA is currently reviewing the submissions received from the industry. The FSCA mentioned that the existing Interpretation Ruling might be withdrawn and replaced in the first half of December 2023.

D. OMNI CONDUCT OF BUSINESS RETURN

The Omni CBR has been delayed and timelines for implementation will be extended. The FSCA is considering whether to have a different version of the Omni Conduct of Business Return for retirement funds and benefit administrators, as compared to other types of financial institutions.

E. QUARTERLY UNCLAIMED BENEFIT RETURNS TO THE FSCA

The FSCA:

- Encourages all funds to ensure they submit their quarterly unclaimed benefits information on time, every time and accurately;
- Is considering issuing penalties against funds that do not do so; and
- Reminds funds to ensure they update the quarterly return for claims that have been paid.

F. TREATING CUSTOMERS FAIRLY (TCF) QUESTIONNAIRE

Many funds have received, from the FSCA, a TCF questionnaire to complete, sometimes as part of a desktop review. The FSCA has stated that it will forward a TCF Questionnaire to all funds that have not yet completed one. It will issue a general communication on the results in March/April 2024.

[1] There is inconsistency in the wording of the Bill across provisions about including the requirement for such older members to still be members of the same provident fund. This may be a drafting issue.