SIMEKA
member of Sanlam group

Retirement Matters 1/2025

Two-pot retirement system update

The Revenue Laws Second Amendment Act was promulgated on 24 December 2024 (the Act). However, due to the urgency of the enactment, some important technical corrections could not be added. For this reason, a further Draft Revenue Laws Amendment Bill 2025 (the 2025 draft Bill) was released on 10 December 2024 and is open for comments until 17 January 2025.

The changes introduced are:

Provident fund members over 55 on March 2021

Provident fund members over the age of 55, must still be members of the same provident fund to be excluded from the two-pot retirement system. The 2025 draft Bill provides that for provident preservation fund members who were age 55 or older on 1 March 2021, the requirement that they should still be in the same provident preservation fund, will not apply.

The election whether to participate in the two-pot retirement system must take place within 12 months, therefore before 1 September 2025. If they make an election, the Act provides that the 10% seeding balance must be calculated on the last day of the month during which the election was made (still capped at R30 000) and allocated to the savings pot on the last day of the month of election.

The current lack of a seeding calculation date in the Income Tax Act, and the different calculation dates specified in the different versions of the Bill prior to enactment, created an anomaly for funds, as for some members the seeding calculation was done on 31 August 2024, and for others on the last day of the month the member elected to opt-in.

It is therefore proposed in the 2025 draft Bill that for members of provident funds and provident preservation funds who were 55 years or older on 1 March 2021, the seeding date and calculation can be either date (end of month of election or 31 August 2024) as determined and set out in the rules of the fund.

Savings pot

The Act provides that the savings pot may be paid in cash to a retiring member on their election. Any portion not paid in cash when the member chooses to retire can be annuitised. The amount does not have to be transferred to the retirement pot to enable annuitisation.

Transfers

Although already industry practice, the requirement that tax directives must be applied for on intra-fund transfers (between pots in the same fund) has now officially been withdrawn.

Ceasing to be a tax resident

The provision that the vested pot in occupational funds is subject to the three-year emigration rule, is removed. The effect of this is that paid-up members will continue to be entitled to receive the vested pot as a withdrawal benefit any time after leaving service. Members may only be entitled to receive their retirement pot as a withdrawal benefit after an uninterrupted period of three years of not being a tax resident. Deferred retirees (persons who retired from employment but have not yet elected to receive their retirement benefit from the fund) may be entitled to receive their retirement pot as a withdrawal benefit after an uninterrupted period of three years of not being a tax resident. The vested pot will still need to be annuitised, unless the benefit is transferred to a retirement annuity fund or preservation fund, where the three-year rule will apply.

Savings withdrawal benefit when a member leaves service

The Act provides that a member who leaves service with a savings pot balance of less than R2 000, will be able to withdraw it, whether the member had taken a savings withdrawal benefit in the same tax year or not.

Exemption from the two-pot retirement system

Exemption is given in the Act to any member to whom an unclaimed benefit was due as at 31 August 2024. Before this change, the Income Tax Act only exempted unclaimed benefit funds.

Further exemptions in the Act include any fund where a liquidator has already been appointed by 31 August 2024 and any fund with no member assets immediately before 1 September 2024.

Taxation Laws Amendment Act (TLAA)

The TLAA was promulgated on 24 December 2024. A noteworthy change is that members of retirement annuity funds who have reached normal retirement age as stipulated in the fund rules but have not yet opted to retire from the fund, can have their retirement interest transferred from a retirement annuity fund into another retirement annuity fund without incurring a tax liability, regardless of whether the transfer is of a voluntary or an involuntary nature.

FSCA quarterly newsletter

In their final quarterly newsletter for 2024, the FSCA stated that it regularly receives extension applications relating to submission of funds' annual financial statements. The FSCA has generally granted those extensions, however, it is imperative for the industry to prepare itself for the future as it is proposed that the period within which retirement funds will be required to submit financial statements may be reduced from six months to four months. As a result, the FSCA will in future follow a stricter approach when they consider extension requests.

Funds should revisit their administration agreements regarding the preparation of financial statements, engagements with auditors, and providing sufficient time for the board to review and sign the statements.

In the event of a penalty being imposed by the FSCA, the penalty should be recovered by the fund from the party who caused the delay and did not perform in line with the service level agreement.

The fee applicable when applying for extension, should also be kept in mind – refer to Retirement Matters 5/2024.

Payment of contributions

On 20 November 2024 the FSCA published a list of retirement funds and employers with arrear contributions to the funds they participate in as at 31 December 2023. The FSCA used the power of public accountability to encourage better compliance and greater transparency. The Conduct of Financial Institutions (COFI) Bill, which is soon to be tabled in Parliament, will enhance the reach of the FSCA and bring employers under its supervision as regulated entities, which in turn would enable the FSCA to directly engage with employers participating in retirement funds to enhance compliance and accountability.

Prudential Standard on the Regulation 28 reporting requirements

The FSCA published communication on 10 December 2024 in which a new format for regulation 28 quarterly non-compliance reports was prescribed. (Refer to Retirement Matters 3/2024 for previous communication.)

The purpose of the new format is to rectify some items that were erroneously excluded from the tables contained in the previous format, and to include notes and instructions on the submission of the reports.

Paragraph 2(4)(c) of FSCA Prudential Standard 1 of 2024 (RF) stipulates that "funds are not required to submit a quarterly report where a full transfer was approved by the Authority in terms of section 14 of the Act and all the provisions of section 14 have been complied with in giving effect to the Authority's approval". Funds were therefore obliged to continue submitting quarterly reports until such time as all members have been transferred.

The new instructions state that funds are not required to complete this report where -

- A liquidator's appointment has been approved by the FSCA, or
- The fund has been exempted from liquidation, or
- A full transfer out was approved by the FSCA in terms of section 14.

If a full transfer has been approved by the FSCA, it is therefore no longer necessary to submit Regulation 28 reports, even if all the members have not yet been transferred pursuant to the approval.

IRFA annual conference

The 2024 Institute of Retirement Funds Africa (IRFA) annual conference was held in Cape Town from 7 to 8 October 2024. The theme of the conference was *Better Together*.

The conference highlighted the interconnectedness of diversity, innovation, and effective communication in driving better outcomes for retirement fund members. A common thread was that members stand at the centre of the new world we live in and that solutions need to be based on that.

Herewith some noteworthy remarks made by presenters:

Member engagement and communication

- **Digital adoption**: With the implementation of the two-pot retirement system, there is an increased use of digital tools for member engagement and data accuracy.
- **Retirement benefit counselling**: The importance of early and effective communication to help members understand their retirement options and reduce stress, was highlighted by a few speakers. Retirement funds should have a key strategy regarding retirement benefit counselling, and it should not be seen as merely a sideshow. Communication should be in a language that members understand.
- **Benefit statements**: Members do not understand the numbers that are communicated to them and funds need to guide them more by taking them through it.
- **Default annuities**: A default annuity strategy (or annuity endorsed by the board of management) is very powerful, but it is important that members be made aware of it. Choosing the default annuity is usually cheaper because of economies of scale and may mean a significantly larger pension for members.
- **Retirement savings**: It was highlighted that the focus for most members is surviving and not on retirement savings. The question the industry should ask is how to assist members and align our strategies to ensure we are moving together towards a socially secure future.
- **Small enterprises**: These should be better empowered to deal with retirement matters. Complying with section 13A of the Pension Funds Act, such as the preparation of the member schedules, are not the core business of most employers. Therefore, consideration needs to be given on how to improve the process. A solution is to advocate for members to have real time access to their retirement system, where they can compare the amount that was deducted from their payslips with what was paid over to the fund.

Gender and generational perspectives regarding retirement savings need to be taken into consideration by funds

Studies show that 42% of women have no retirement savings. Women generally save less because of interrupted careers, and they live longer than men, suggesting a need for tailored retirement solutions. It is important to consider whether women should be provided the opportunity to retire later than men. Another possible solution would be to create incentives for women to start saving earlier.

Investment strategies

- **Globalisation**: The impact of globalisation and offshore investments on the retirement landscape was highlighted by speakers, and the need to consider how to approach globalisation.

- **Environmental, social and governance (ESG)**: While ESG investing should be a critical factor in all investments and more is needed in terms of setting out a vision and strategic direction, as well as more research to evaluate the risk versus the merits, due diligence and governance oversight, and regulatory compliance. ESG reporting may become essential, which may be difficult because of new data and difficulties comparing emerging markets and developed markets. Asset managers might want to start considering those numbers and how reporting can be improved.

Infrastructure and impact investing

- Consideration should be given to what "impact" in South Africa means to the man on the street and whether the investment is adding value to their lives.

- Speakers mentioned that public-private partnerships will be crucial for infrastructure development in South Africa and is the way to have an impact element.

- It was mentioned that regulatory conflict exists between different pieces of legislation and an overarching framework is needed. A clear definition of what infrastructure is, needs to be set out, for instance can a cellular network be regarded as infrastructure. The administrative difficulty of infrastructure reporting and risk management concerns need to be addressed by the regulators.

- The two-pot retirement system means funds need liquidity, which in turn may mean that large portions of fund assets cannot be invested in infrastructure.

Feedback from the FSCA

Auto-enrolment for the formal sector will be a focus point and a solution for informal sector workers could be discussed simultaneously.

The two-pot retirement system implementation highlighted areas of weakness, as well as the resilience and strength of the retirement funds sector.

Data quality will be another focus of the FSCA going forward. They procured a new supervisory system with a major focus on data quality and completeness to transfer data to the new system, which includes board of management data, employer data, up-to-date information on funds and fund returns. Engagement with the industry will take place and there will be ongoing communication on the process.

Feedback from the Office of the Pension Funds Adjudicator (OPFA)

Complaints around arrear contributions form 83% of complaints received by the OPFA. It is the view of the OPFA that it is the responsibility of the board of management to collect contributions and the suggestion was made that some penalty/responsibility should be directed towards boards of management, and not only against employers.

The OPFA encouraged the industry to make use of the Financial Services Tribunal when parties want to appeal OPFA's determinations and only resort to court if not in agreement with the Financial Services Tribunal, as court proceedings are expensive, and many complainants may not be able to partake in those proceedings.

The OPFA is considering a process where the names of funds or employers who regularly receive determinations against them, will be published. This will however be done in a regularised manner by making available a framework, which will be consulted on beforehand.

Q&A

What is the time-period within which funds must issue benefit statements to active members?

PF86 states that funds must issue benefit statements no later than six months after financial year end.