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LEGAL UPDATES

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Retirement Fund Reform

The Green Paper

A Green Paper on Comprehensive Social Security and Retirement Reform was published on 18 August 2021 by the Minister of Social Development. A Green Paper is a government discussion paper that includes policy and legislation. After much criticism, the Minister then withdrew the Green Paper. The Department of Social Development stated that the decision to withdraw the Green Paper was to provide better clarity on some of the matters entailed in the paper and that the Green Paper would be re-issued.

National Treasury media releases

According to Deputy Director-general for tax and financial sector policy at Treasury, Ismail Momoniat, a planned overhaul of South Africa's retirement fund rules is primarily aimed at encouraging people to save more but there will be limited opportunity for people to access monies in their retirement fund early. Momoniat was careful to point out that the focus of the retirement reforms is not on withdrawals, but on saving more and preserving contributions.

Tax legislation will be introduced to discourage people from cashing in their retirement fund monies, including when they change jobs. However, the tax rules will also be changed to allow members early access to a portion of their fund monies.

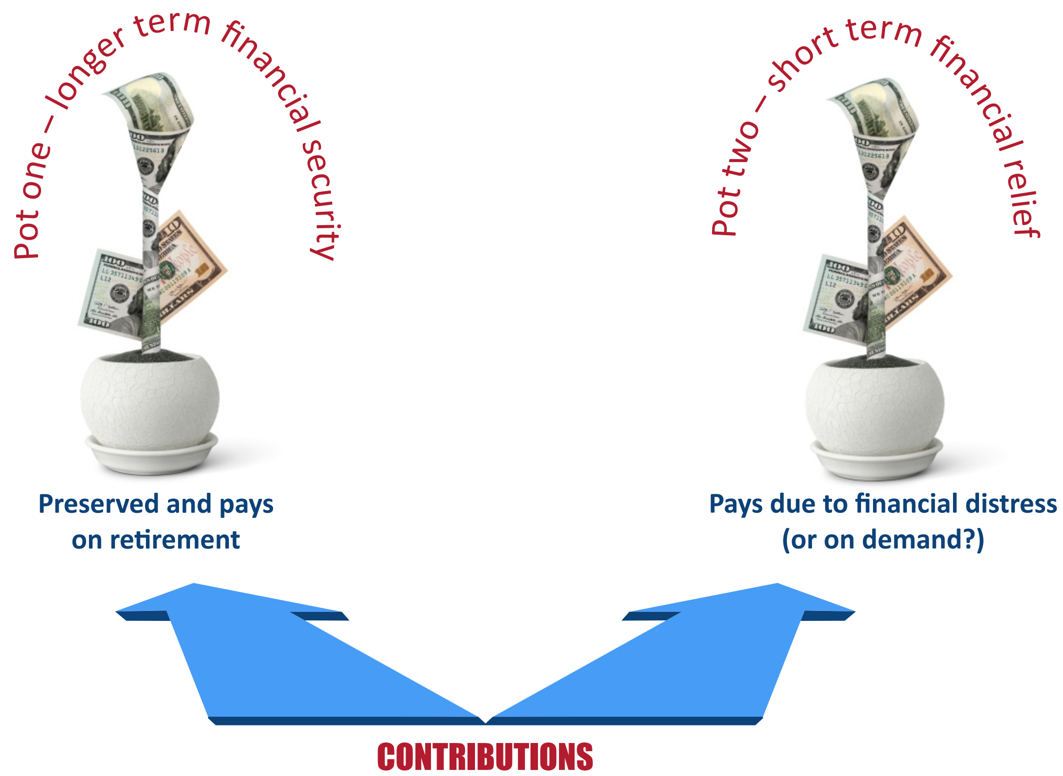
Our former finance minister, Tito Mboweni, has shown support for a system that allows access to a percentage of a members' retirement funds in the current times of difficulty. He referred to monies being used, for example, to settle bond repayments or debt.

Details and timing

Consultations continue and policy is yet to be crystalized into draft amendments to the tax laws. It is likely that Treasury will release a Bill for comment by the October Medium Term Budget Policy Statement and that the changes would become effective in 2022.

Treasury's two-pot system

Treasury has raised the possibility of a two pot system. Contributions would be split between the pots (in a proportion not yet decided). Pot one would be for longer-term retirement savings and will have to be preserved and paid out on retirement. Pot two would be for short-term financial needs and members will be able access pot two for this purpose.



Many questions still require clarity in relation to the two-pot system

As the detail of the two-pot system has not yet been decided upon or expressed through draft legislation, there are many issues that still require clarity. For example:

1. What will the split be between contributions going to pot one and pot two? Percentages of between 10% and 33% have been bandied around.
2. At the time that the legislation becomes effective, will access only be allowed to contributions and return built up in pot two after that date or will some of what has already been accrued in the pension fund be added to pot two and allowed to be accessed?
3. Will there be a minimum amount that must be available in pot two before it may be accessed?
4. Will access be allowed at any time or will it be restricted to, for example, once a year.
5. Will access be permissible for reasons of financial difficulty only or for other reasons as well? Will a reason be required or will access simply be permitted? If access is permissible for reasons of financial difficulty only, who will make this assessment and decision?
6. How will retirement annuity funds, preservation funds and defined benefit funds be affected and will there be different rules for these funds?
7. How will deductions, such as on divorce, maintenance and for housing loans or guarantees be affected?
8. How will the amounts accessed in pot two be taxed?
9. How will these provisions interact with the recent compulsory annuitisation of provident fund changes?

Auto-enrolment

Treasury has expressed support for the proposal that anyone who is employed must put aside money as part of a system of auto-enrolment.

Momoniat said that "Many people who work but still don't contribute towards a retirement fund. So we want to have a sort of auto-enrollment, which may later become a form of mandatory preservation".

The intention behind extending coverage of South Africans under an auto-enrolment system is that persons would have to enrol in a fund if they earn wages, but also if they are contract workers. Treasury gave the example of Uber drivers.

Treasury appears to be currently shying away from the Department of Social Development proposals that companies and workers contribute as much as 12% of their earnings to a fund that could provide unemployment, retirement and disability benefits.

Consolidation of retirement funds

There is a continuing focus on consolidating retirement funds which Treasury believes would increase funds' efficiency and reduce costs through economies of scale.

More to come

We are watching these developments closely and will bring you more information once we have further clarity and detail.