Dashboard

Legal Updates

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How is the two-pot system changing?

Where is the two-pot legislation in the process?

On 1 November 2023, Treasury released the next draft version of the Revenue Laws Amendment Bill (RLAB), which is the draft legislation that contains the two-pot system legislation. The RLAB included many of the updated proposals on the two-pot system which Treasury recently made to the Standing Committee on Finance. The RLAB will now go to the Select Committee on Finance on 21 November 2023. Treasury has stated that the RLAB will only be gazetted in 2024.

Proposed changes incorporated in the RLAB

In this edition of the Dashboard, we look at the some of the proposed changes to the two-pot system as incorporated into the latest draft version of the RLAB.

1 March 2025

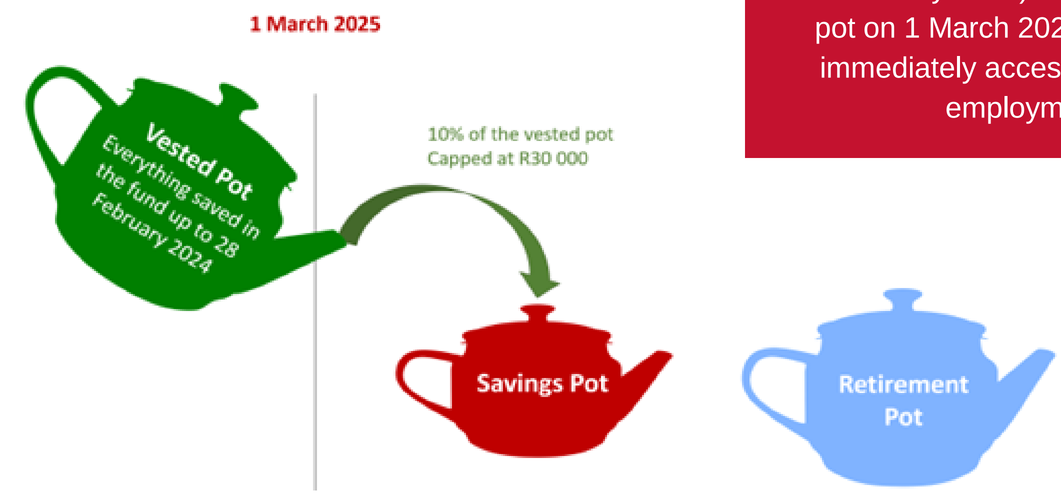
Treasury proposed moving the implementation date of the two-pot system from 1 March 2024 to 1 March 2025. This date has been incorporated into the latest version of the RLAB. However, this date is not yet final. It seems unlikely, however, that Government to continue with a 1 March 2024 implementation date if the final legislation is only gazetted next year. That would be a risk for the retirement fund industry, including funds and their members.

Seeding

The seeded amount is a once-off event of 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.

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.



Does the seeded amount reduce the compulsory annuitisation non-vested or vested portion of the vested pot?

For members of provident funds and preservation provident funds under age 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 age 55 and over on 1 March 2021 (and still members of the same provident fund):

These members (on 28 February 2025) will only have vested amounts in their vested pot, so seeded amounts will come out of their vested amounts.

OPT IN is the default

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.

Communication and financial advice for these members will be important so that they can make choices that suit their personal circumstances. Some of this choice will depend on whether these members want more cash out of the fund before retirement or after retirement.

Who else may be out of the two-pot system?

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

The tax mechanism for savings withdrawals from the savings pot

The RLAB now contains provisions for the South African Revenue Service (SARS) to issue a fund's administrator with a flat rate to tax the savings withdrawal. No doubt SARS will provide more information to the industry as to how it envisages this mechanism working in practice.

Savings withdrawals from the savings pot are taxable at the member's marginal rate. This remained unchanged.

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.

[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.

The two-pot system and death benefits

Treasury intends to keep the current position in relation to death benefits. After the two-pot system is implemented, beneficiaries would still be able to take their whole death benefit allocation either as an annuity or as a cash lump sum, depending on what they decide.

Section 37D deductions to be made proportionately from all three pots

Section 37 deductions are those deductions that can be made from benefits or fund credits related to housing loans/ guarantees, maintenance orders, divorce orders and theft/ fraud/ dishonesty at the employer. Previously, the RLAB contained provisions which meant that these deductions could be made from the retirement pot and vested pot but not the savings pot. In the revised draft RLAB, deductions can be made proportionately from all three pots, including the savings pot.

A non-member spouse's pension interest

After a divorce, when a non-member spouse decides to transfer the pension interest allocated to them to another fund, it is transferred from the same pot in the transferring fund to same pot in the receiving fund (savings pot to savings pot, vested pot to vested pot and retirement pot to retirement pot), or from the vested or savings pot in the transferring fund to the retirement pot in the receiving fund. This is the decision of the non-member spouse.

Pension Funds Act amendment

There is a separate piece of legislation to allow for the changes required to the Pension Funds Act for the two-pot legislation (among other changes). Timelines have not yet been set for the progression of the proposed amendments to the Pension Funds Act (now called the Pensions Law Amendment Bill). This amendment includes the changes required for section 37D deductions, including on divorce, which are required for the two-pot system.

Keep working…

In the meantime, administrators will keep working on the implementation of the two-pot system. If the implementation date changes to 1 March 2025, this will give some necessary breathing space to retirement funds to ensure that the required communication, among other things, can be put into place.

Finding a better way

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