



JLAW IC 1 of 2024: Revenue Laws Amendment Act No. 12 of 2024

Introduction

The Revenue Laws Amendment Act No. 12 of 2024 (RLAA) was promulgated in Government Gazette No. 50750 on 4 June 2024. It introduces the changes to the Income Tax Act required for the implementation of the "two-pot" retirement system with effect from 1 September 2024.

The RLAA, and by implication the "two-pot" system, applies to pension, provident, pension preservation, provident preservation and retirement annuity funds, irrespective of whether these funds are classified as defined benefit or defined contribution funds or whether they are registered under the Pension Funds Act or their own Acts, such as for example the Government Employees Pension Fund and other public sector funds.

It does not apply to beneficiary funds and unclaimed benefit funds, pensioners and members in legacy retirement annuity policies. It also does not apply to members who were in a provident or provident preservation fund on 1 March 2021, 55 or older on that date, and who are still members of that same fund on 1 September 2024 (referred to in this document as "over 55-provident fund members"), unless they opted in to the "two pot"-system.

This document discusses the components of "two-pot" retirement system (paragraphs 1 to 3), allocations between the components (paragraph 4), access before retirement and the taxation of those benefits (paragraph 5), the *de minimis*-rule at retirement (paragraph 6), over 55-provident fund members (paragraph 7), and legacy retirement annuity policies (paragraph 8).

1. Vested component

The vested component is the member's current benefit as at 31 August 2024, plus the growth thereon. It includes the member's *vested and non-vested benefits up to 31 August 2024, as well as the contributions payable until 31 August 2024, even though those contributions might not have been paid on that date.

*Vested and non-vested benefits on 1 March 2021:

<p>a. Provident fund member younger than 55</p> <p>Vested benefit</p> <ul style="list-style-type: none"> i. accumulated benefit up to 1 March 2021 ii. + amounts credited to i iii. + growth on i and ii iv. – proportionate section 37D deductions 	<p>b. Provident fund member 55 or older</p> <p>Vested benefit</p> <ul style="list-style-type: none"> i. accumulated benefit up to date of exit ii. + amounts credited to i iii. + growth on i and ii iv. – proportionate section 37D deductions
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<p>Non-vested benefit</p> <p>v. contributions after 1 March 2021</p> <p>vi. + amounts credited to v after 1 March 2021</p> <p>vii. + growth on v and vi</p> <p>viii. – proportionate section 37D deductions</p>	<p>Non-vested benefit</p> <p>v. contributions after date of transfer to new fund</p> <p>vi. + amounts credited to v after date of transfer to new fund</p> <p>vii. + growth on v and vi</p> <p>viii. – proportionate section 37D deductions</p>
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Irrespective of age:

<p>c. Provident preservation fund member</p> <p>Vested benefit</p> <p>i. benefit on 1 March 2021</p> <p>ii. + vested benefits transferred from another fund</p> <p>iii. + growth on i and ii</p> <p>iv. – proportionate section 37D deductions</p>	<p>d. Pension, pension preservation and retirement annuity fund member</p> <p>Vested benefit</p> <p>i. vested benefits transferred from another fund</p> <p>ii. + growth on i</p> <p>iii. – proportionate section 37D deductions</p>
<p>Non-vested benefit</p> <p>v. non-vested benefit transferred from another fund</p> <p>vi. + growth on v</p> <p>vii. – proportionate section 37D deductions</p>	<p>Non-vested benefit</p> <p>iv. benefit accumulated in fund</p> <p>v. + non-vested benefit transferred from another fund</p> <p>vi. + growth on iv and v</p> <p>vii. – proportionate section 37D deductions</p>

The RLAA states that no 'new' contributions may be paid into the vested component after 1 September 2024. However, although the RLAA does not explicitly state it as such, contributions in respect of over 55-provident fund members must continue to be paid into this component, since the two-pot system does not apply to these members unless they opt-in to it.

The seeding (opening balance) for the savings component is deducted from this component. This seeding amount does not include any contributions payable up to 31 August 2024 that were only received after 1 September 2024. It therefore only comes from the member's benefit as at 31 August 2024.

The rules that currently apply to a member's benefit will continue to apply to his vested component. This means that –

- ✓ a member of a pension and provident fund may take his total vested component as a lump sum when he resigns;
- ✓ a member of a preservation fund retains the right to make one pre-retirement withdrawal from his vested component, and

- ✓ a member of a retirement annuity fund is not allowed to take his vested component on resignation before age 55, nor is he allowed to make a pre-retirement withdrawal from it.

Any deductions in terms of section 37D of the Pension Funds Act (i.e. housing loans, divorce order amounts, maintenance order amounts, damages caused to employers due to theft, fraud, dishonesty or misconduct) must be made proportionately from all three components.

On retirement, the member may take his total vested benefit plus one-third of his non-vested benefit in this component as a lump sum. At least two-thirds of the non-vested benefit must be used to buy an annuity, subject to the *de minimis*-rule discussed under paragraph 5.



Vested component

- Benefit as at 31/08/2024, incl contributions payable for any periods up to the end of August 2024, + growth
- Split between vested & non-vested benefit
- No new contributions, EXCEPT for over 55-provident fund members
- Seeding comes from here
- Existing rules apply
- On retirement, may take total vested *benefit* + 1/3rd of non-vested *benefit* as lump sum, taxed on retirement lump sum benefit tax table

2. Savings component

The savings component is one of the legs of the “two-pot” system.

From 1 September 2024, a member’s contributions to his pension, provident or retirement annuity fund will be split, with one-third of the contributions going into his savings component. This excludes an over 55-provident fund member, unless he opted in.

The savings component will have an opening balance, called a seeding amount, which is based on and comes from the member’s vested component as at 31 August 2024. It does not include any contributions payable until 31 August 2024 but only received after that date. For example, if the contributions for August 2024 are only paid in September 2024, those contributions will not be taken into account to determine the seeding amount.

The seeding is only done once, not every year. A member who joins a retirement fund for the first time after 1 September 2024 will not have a seeding amount, simply because he did not have an existing benefit, i.e. a vested component, on 31 August 2024.

The seeding amount is equal to 10% of the member’s vested component as at 31 August 2024, limited to a maximum of R30 000.

Example:

- If the member had R10 000 in the fund on 31 August 2024, his seeding amount will be R1 000.
- If the member had R100 000 in the fund on 31 August 2024, his seeding amount will be R10 000.
- If the member had R1 000 000 in the fund on 31 August 2024, his seeding amount will be R30 000.

The member will be entitled to make one withdrawal **per contract from his savings component per tax year. A tax year is the period between 1 March and the end of February of the next year. This withdrawal, called a savings withdrawal benefit, will be taxed at the member's marginal tax rate.

**The 2024 Draft Revenue Laws Second Amendment Bill also provides for seeding per contract. This principle has been confirmed by National Treasury in a workshop on 14 June 2024. This means that a member will be able to have seeding applied per contract, and to make one withdrawal per tax year from each contract.

The concept of different contracts / policies in the same fund typically applies in retail funds, where a member has transferred withdrawal benefits from different occupational funds into the same preservation fund or where a member has different products, housed in separate policies, in the same retirement annuity fund. This does not mean that it does not apply to occupational funds though. A member of a pension or provident fund may also have more than one record in the same fund – a paid-up record relating to an earlier resignation benefit that has been preserved in the same fund or transferred into the member's new fund, and an active record in the same fund into which employer and member contributions are allocated.

The amount of each savings withdrawal benefit must be at least R2 000, before taking into account any costs and tax. Refer to paragraph 5 for an example of how this is dealt with.

If a member has already taken a savings withdrawal benefit and he resign in that same tax year, he will be entitled to take another savings withdrawal benefit in that tax year if the value in his savings component is less than R2 000. If the value in the savings component is more than R2 000, he will be able to withdraw it in the next tax year.

Any deductions in terms of section 37D of the Pension Funds Act (i.e. housing loans, divorce order amounts, maintenance order amounts, damages caused to employers due to theft, fraud, dishonesty or misconduct) must be made proportionately from all three components.

On retirement, the member will be entitled to take his total savings component as a lump sum, taxed on the retirement lump sum benefit tax table where the first R550 000 in aggregate is taxed at 0%. To determine the value of the member's savings component on that date, the following must be taken into account:

- i. The seeding amount if the member was a member of a retirement fund on 31 August 2024;
- ii. *plus* one-third of contributions payable from 1 September 2024;
- iii. *plus* one-third of any amounts accrued after 1 September 2024, for example risk benefit or surplus amounts;
- iv. *plus* any transfer from the member's savings component in a previous fund;
- v. *plus* the growth on i, ii and iii;
- vi. *less* any transfer to the member's retirement component;
- vii. *less* any savings withdrawal benefits paid,
- viii. *less* any pro rata section 37D-deductions.

In a defined benefit fund, a member's savings component will not be determined as set out above. Instead, it will be equal to the value of one-third of the member's pensionable service after 1 September 2024.



Savings component

- Seeding: 10% of value on 31/08/2024, with a maximum of R30 000, + growth
- 1/3rd of contributions from 01/09/2024 + growth
- 1/3rd of amounts accrued after 01/09/2024
- One savings withdrawal benefit per tax year
- Minimum savings withdrawal benefit = R2 000, EXCEPT on resignation in that same tax year
- Savings withdrawal benefit taxed at marginal rate
- On retirement, may take total savings component as lump sum, taxed on retirement lump sum benefit tax table

3. Retirement component

The retirement component is the second leg of the "two-pot" system.

From 1 September 2024, a member's contributions to his pension, provident or retirement annuity fund will be split, with two-thirds of the contributions going into his retirement component.

No pre-retirement withdrawals are allowed from the member's retirement component, except on cessation of South African tax residency or expiry of a visa, as discussed in more detail under paragraph 5.

On retirement, the member must use the amount in his retirement component to buy an annuity, subject to the *de minimis*-rule discussed under paragraph 5. To determine the value of the member's retirement component on retirement, the following must be taken into account:

- i. Two-thirds of contributions payable from 1 September 2024;
- ii. *plus* two-third of any amounts accrued after 1 September 2024, for example risk benefit or surplus amounts;
- iii. *plus* any transfer from the member's retirement component in a previous fund;
- iv. *plus* any amounts transferred from the member's vested or savings components;
- v. *plus* the growth on I to iv;
- vi. *less* any pro rata section 37D-deductions.

In a defined benefit fund, a member's retirement component will not be determined as set out above, but will instead be equal to the value of two-thirds of the member's pensionable service from 1 September 2024.

Any deductions in terms of section 37D of the Pension Funds Act (i.e. housing loans, divorce order amounts, maintenance order amounts, damages caused to employers due to theft, fraud, dishonesty or misconduct) must be made proportionately from all three components.



Retirement component

- 2/3^{rds} of contributions from 01/09/2024 + growth
- 2/3^{rds} of amounts accrued after 01/09/2024
- No access before retirement,
EXCEPT on cessation of tax residency / visa expiry
- On retirement, must use total value to buy an annuity, subject to *de minimis*-rule

4. Allocation between components

A. A member is allowed to allocate amounts between the following components in the same fund:

From	To
Vested	Retirement
Savings	Retirement

B. A member is allowed to allocate amounts between the following components when he transfers to another fund:

From	To
Vested	Vested
	Retirement
Savings	Savings
	Retirement

The member's decision to make an allocation to his retirement component as referred to above is irrevocable. The member therefore has to take all the implications into account before making such a decision, as he will not be able to reverse it afterwards.

When a non-member spouse elects to transfer his portion of a divorce order allocation to another fund, it must be transferred in the same manner as set out in B above, in other words, that part if the allocation coming from the member's vested component must be allocated to the non-member spouse's vested component etc.

5. Access before retirement

The Income Tax Act now allows for the following benefits **before retirement date**. The definition of *retirement date* refers to the date on which the member *elects to retire*. This means that even if a member has already reached the normal retirement age as specified in the rules of his pension or provident fund, or the age of 55 in the case as a member of a retirement annuity or preservation fund, but has not yet elected to receive payment of his retirement benefit, he will still be able to access his retirement benefit as set out below. If however the member has already elected to retire, he will not be able to access a portion of or his total benefit as a pre-retirement withdrawal, but will have to take it as a retirement benefit

A. Savings withdrawal benefit

A member of a pension, provident, preservation and retirement annuity fund may make one withdrawal, referred to as a savings withdrawal benefit, from his savings component in a tax year, as long as he has at least R2 000 in his savings component. This does not apply to an over 55-provident fund members (dealt with under paragraph 7) and members in legacy retirement annuity policies (discussed in paragraph 8). A savings withdrawal benefit will be taxed at the same rate that applies on the member's taxable income. This is referred to as the member's marginal tax rate.

Although there is no maximum cap on the amount that can be withdrawn, there is a minimum. The amount of each savings withdrawal benefit must be at least R2 000, before taking into account any costs and tax.

Example:

The member has R2 100 in his savings component. He therefore qualifies to take a savings withdrawal benefit, as the *de minimis* requirement for this purpose has been met.

His marginal tax rate is 18%.

The fee for the withdrawal is R200.

He decides to take the full R2 100 as a savings withdrawal benefit.

The benefit payable, after the deduction of the costs, is R1 900.

The fund applies for a tax directive on R1 900.

The fund deducts the tax of R342 from the R1 900 and pays the balance of R1 558 to the member.

The fund administrator must apply for a tax directive on a savings withdrawal benefit. To do that, it will require the member's tax number. The member must therefore ensure that he is registered with SARS for tax purposes and that his tax number is still valid. The member can request a simulated tax directive to see what the tax is that will be payable on the savings withdrawal benefit. Once the member has decided to take the requested savings withdrawal benefit and SARS issued a tax directive, the tax directive is final and cannot be cancelled. This means that the member cannot then change his mind and decide not to take the benefit if for example he finds that SARS has issued an IT88 directing the fund administrator to deduct outstanding tax owed to SARS from the benefit.

B. Resignation

A member of a pension or provident fund may take his total vested component as a lump sum when he resigns from employment. It will be taxed on the withdrawal lump sum benefit tax table, where the first R27 500 in aggregate is taxed at 0%. The member is not allowed to take his retirement component when he resigns; it is only available on retirement, unless paragraph E or F applies.

De minimis-rule

If the member has not yet made a withdrawal from his savings component in the same tax year as his resignation and he has at least R2 000 in his savings component, he will also be able to take a savings withdrawal benefit. If he has less than R2 000 in his savings component, he will not be able to take a savings withdrawal benefit when he resigns. If his benefit grows to at least R2 000 in a subsequent tax year, he will be able to take it as a savings withdrawal benefit then. If not, he will have to wait until retirement, at which time he will be able to take it as a lump sum, taxed on the retirement lump sum tax table.

If the member has already made a withdrawal from his savings component in the same tax year as his resignation and the balance in his savings component is less than R2 000, he will be able to take that full amount as a savings withdrawal benefit, taxed at his marginal tax rate. If the balance in his savings component is more than R2 000, he will be able to take that as a savings withdrawal benefit in any subsequent tax year.

C. Pre-retirement withdrawal

A member of a preservation fund is allowed to make one pre-retirement withdrawal from his vested component. There is no restriction on the amount that can be withdrawn, which means that the member may take his total vested component as a pre-retirement withdrawal. This will be taxed on the withdrawal lump sum benefit tax table.

If the member has not yet made a withdrawal from his savings component in the same tax year as his pre-retirement withdrawal and he has at least R2 000 in that component, he will also be able to take the amount in his savings component as a savings withdrawal benefit. This will be taxed at the member's marginal tax rate. If he has less than R2 000 in his savings component, he will have to wait until it has grown to at least R2 000, at which time he will then be able to take it as a savings withdrawal benefit.

The pre-retirement withdrawal-right applies across preservation funds. This means that if the member has for example transferred a withdrawal benefit to preservation fund A, made a pre-retirement withdrawal from preservation fund A and then transferred the balance of his benefit in preservation fund A to preservation fund B, he will not be entitled to a pre-retirement withdrawal from preservation fund B.

The member is not allowed to take his retirement component as part of his pre-retirement withdrawal; it is only available on retirement, unless paragraph E or F applies.

D. Retirement annuity *de minimis*

If the total benefit in a member's retirement annuity fund is lower than the prescribed *de minimis* amount (currently R15 000), the member may take the total benefit in the fund as a lump sum. This does not apply on policy-level, but on fund-level; in other words, if the member has more than one policy, the values across all policies must be taken into account to determine whether the *de minimis*-requirement is met.

This benefit will be taxed on the withdrawal lump sum tax table.

E. Emigration and cessation of South African tax residency

When a member in a pension or provident fund emigrates, he usually also leaves the employment of his employer. The implication of this is that he will then qualify to take his vested component as a resignation benefit and his savings component as a savings withdrawal benefit lump sum as described under

paragraphs A and B above. If that member then ceases to be a South African tax resident, he will be able to take his retirement component as a lump sum after the cessation of his tax residency for three consecutive years. It will be taxed on the withdrawal lump sum tax table.

A member of a retirement annuity fund may take his total benefit in the fund as a pre-retirement lump sum benefit if he emigrated and the emigration was recognised by the South African Reserve Bank (SARB) for purposes of exchange control, provided that the application for such SARB recognition was received on or before 28 February 2021 and approved on or before 28 February 2022. Any emigration thereafter would not automatically entitle the member to pre-retirement access of his retirement fund benefit. If however the member's South African tax residency has ceased for an uninterrupted period of three years, he will be able to take his total fund benefit as a pre-retirement withdrawal.

A member in a preservation fund who has already made a pre-retirement withdrawal can also access his benefit upon emigration and cessation of tax residency under the same conditions as those applying to a member of a retirement annuity fund.

The lump sum benefit taken upon emigration or cessation of tax residency for an uninterrupted period of three years will be taxed on the withdrawal lump sum tax table.

F. Expiry of visa / work permit

When the visa or work permit of an immigrant who became a member of a pension or provident fund expires, it usually leads to the termination of their employment contract. Such a member will then qualify for a resignation benefit as referred to under paragraph B above. The member does not have to take a resignation benefit; he can take his total benefit as a lump sum based on the expiry of his visa / work permit.

A member of a retirement annuity fund, and a member of a preservation fund who has already taken a pre-retirement withdrawal benefit, can also take his total benefit as a pre-retirement benefit when his visa / work permit expires.

The lump sum benefit taken upon the expiry of a visa / work permit will be taxed on the withdrawal lump sum tax table.

G. Death

On the death of a member before his retirement, the total benefit in the fund will become payable. Each beneficiary will have the option to have the part of the benefit allocated to them by the trustees of the fund under section 37C of the Pension Funds Act paid as a lump sum, an annuity (including a living annuity) or a combination of a lump sum and an annuity.

Any lump sum will be taxed in the hands of the deceased immediately prior to his death on the retirement lump sum benefit tax table.

Annuity payments will be taxed as income in the hands of the beneficiary.

Pre-retirement access can be summarised as follows:

Benefit	Which fund	Which component	Taxation
Savings withdrawal benefit	<ul style="list-style-type: none"> • Pension • Provident, excl over-55's • Preservation • Retirement annuity, excl legacy RA policies 	Savings	Marginal tax rate
Resignation	<ul style="list-style-type: none"> • Pension • Provident 	Vested	Withdrawal tax table
		Savings, subject to <i>de minimis</i> -rule	Marginal tax rate
Pre-retirement withdrawal	<ul style="list-style-type: none"> • Preservation 	Vested	Withdrawal tax table
		Savings, subject to <i>de minimis</i> -rule	Marginal tax rate
RA <i>de minimis</i>	<ul style="list-style-type: none"> • Retirement annuity 	All three components	Withdrawal tax table
Emigration and cessation of SA tax residency	<ul style="list-style-type: none"> • Pension • Provident • Preservation • Retirement annuity 	All three components	Withdrawal tax table
Expiry of visa	<ul style="list-style-type: none"> • Pension • Provident • Preservation • Retirement annuity 	All three components	Withdrawal tax table
Death	<ul style="list-style-type: none"> • Pension • Provident • Preservation • Retirement annuity 	All three components	Lump sum: Retirement tax table
			Annuity: Beneficiary's marginal tax rate

6. *De minimis*-rule at retirement

A member does not have to take his retirement benefit from a retirement fund just because he has reached the normal retirement age. He may retire from a fund at any time after having reached the normal retirement age.

In a retail fund, the normal retirement age is 55 years. In an occupational fund, it is the normal retirement age as specified in the fund's rules, which is usually the retirement age specified in the member's employment contract.

On retirement, a member must use the following to buy an annuity:

- a. two-thirds of his non-vested benefit in his vested component;
- b. plus the total value in his retirement component,

unless the sum of a and b is less than R165 000, in which case he can also take these two amounts as a lump sum, taxed on the retirement lump sum benefit tax table.

A member can buy more than one annuity or a combination of types of annuities, as long as the amount used to buy each annuity is more than R165,000.

7. Over 55-provident fund member

The RLAA provides for the exclusion of over 55-provident fund members, unless such member elects to be part of the two-pot system. The 2024 Draft Revenue Laws Second Amendment Bill states that the member must make this election between 1 September 2024 and 31 August 2025, and that the seeding amount will then be calculated on the last date of the month in which the member opts in, but still limited to the monetary cap of R30 000.

To determine which members fall into this category, the following criteria must be met:

A. Provident fund member:

- Must have been a member of a provident fund on 1 March 2021;
- must have been 55 or older on 1 March 2021, and
- must still be a member of that same provident fund on 1 September 2024.

If this member transfers to another provident fund or a pension or retirement annuity fund between 1 September 2024 and 31 August 2025, he will automatically become subject to the two-pot regime on the day that he first starts contributing to the new fund, with a seeding amount calculated on that same day. All contributions to the new fund will be split, with one-third going into his savings component and two-thirds to his retirement component.

If this member transfers to another provident fund or a pension or retirement annuity fund after 1 September 2025, he will automatically become subject to the two-pot regime on the day that he first starts contributing to the new fund, but no seeding will apply, which means that he will not have an opening balance in his savings component. All contributions to the new fund will be split, with one-third going into his savings component and two-thirds to his retirement component.

B. Provident preservation fund member:

- Must have been a member of a provident fund before 1 March 2021;
- must have transferred the benefit in that provident fund to a provident preservation fund before 1 March 2021;
- must have been a member of a provident preservation fund on 1 March 2021;
- must have been 55 or older on 1 March 2021, and
- must still be a member of that provident preservation fund on 1 September 2024.

If these criteria are met, the fund administrator does not have to create a savings component into which a seeding amount must be allocated. The member will then not have access to a savings withdrawal benefit, unless he opts into the two-pot system.

8. Legacy retirement annuity policy

Legacy retirement annuity (RA) policies are excluded from the two-pot system.

The RLAA defines a legacy retirement annuity policy as “any policy held by a retirement annuity fund entered into before 1 September 2024 with a pre-universal life or universal life construct, subject to such conditions that the Financial Sector Conduct Authority may determine”.

A legacy RA policy with a universal life construct has both a savings and a risk cover component. The risk cover provided consists of disability and death benefits, which can be added, changed or deleted at any time. The part of the member’s contributions to fund the premiums for the risk benefits is determined monthly or annually. Because of the flexibility of these risk benefits, it is impossible to determine the split between the risk cover-premiums and the contribution towards the member’s retirement provision.

The pre-universal life policies usually have reversionary bonuses attached to it. No withdrawals are allowed from these policies. The concept of a fund value does not exist. Instead, the policy consists of components like a reserve and death and surrender values.

It is not possible for these types of policies to be split into the three components which make up the two-pot system; hence the exclusion of these policies.

The RLAA does not allow for members in legacy RA policies to be able to get access to seeding if they were to transfer from the legacy RA policy to a non-legacy RA policy after 1 September 2024. The implication of that is that unless the member moves to a non-legacy RA policy and gives up all the ancillary benefits attached to that policy before 1 September 2024, he will not be subject to the two-pot system and accordingly not be eligible for a savings withdrawal benefit. Members must carefully consider the implications of such a switch and what they will be giving up in favour of pre-retirement access to their retirement fund benefit.

Conclusion

For many members, access to their retirement benefit before they retire may appear to be the solution to their immediate financial problems. Before accessing money that is intended to provide an income after retirement, they should consider the impact of such withdrawals on their future selves. Any financial decision, and especially one that can have disastrous long-term implications, should be taken with the assistance of a qualified financial adviser.

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