JLAW IC 1 of 2025: Taxation Laws Amendment Act No. 42 of 2024 Introduction

The Taxation Laws Amendment Act No. 42 of 2024 (TLAA 2024) was promulgated in Government Gazette No. 51826 on 24 December 2024. The following amendments to the Income Tax Act apply to retirement funds.

1. Retirement annuity fund post-retirement transfer

Background

Pre-retirement transfers: The Income Tax Act allows for transfers between similar types of retirement funds and from a less restrictive to a more restrictive retirement fund prior to a member reaching his retirement date. Following compulsory annuitisation across all retirement funds from 1 March 2021, members of pension and provident funds are allowed to transfer between these funds and from these funds to retirement annuity funds without incurring any tax liability. Until 1 September 2024 when the two-pot system was introduced, a member of a retirement annuity fund (RA) could only access his benefit before he reached the age of 55 under very specific circumstances: medical disability, cessation of South African tax residency, and leaving the country on the expiry of a visa or work permit. Even after the implementation of the two-pot system, an RA is still more restrictive than a pension or provident fund: a member of a pension or provident fund can access his vested component when he leaves employment, while this option is not available to an RA member. This makes an RA the most restrictive type of fund. Consequently, a member of an RA can only transfer to another RA. The following transfers are allowed without incurring a tax liability:

<table>
<tr><th>From</th><th>To</th></tr>
<tr><td>Any:
Pension fund</td><td>Any:
Pension fund</td></tr>
<tr><td>Pension preservation fund</td><td rowspan="4">Pension preservation fund
Provident fund
Provident preservation fund
Retirement annuity fund</td></tr>
<tr><td>Provident fund</td></tr>
<tr><td>Provident preservation fund</td></tr>
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<tr><td>Retirement annuity fund</td><td>Retirement annuity fund</td></tr>
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Post-retirement transfers: The Taxation Laws Amendment Act No. 43 of 2014 changed the Income Tax Act to allow a member who has reached his normal retirement age* to choose from which date he wants to receive his

retirement benefit. The date on which the member elects to retire is then his retirement date. This amendment became effective on 1 March 2015.

* defined in the Income Tax Act as the date on which a member retires from employment and becomes entitled to his pension or provident fund benefit, or in the case of a member of a preservation fund or an RA, the age of 55.

Initially, these members, referred to as deferred retirees, were not allowed to transfer their post-retirement benefits to another fund. The history of the changes allowing for such transfers can be summarised as follows:

Enabling legislation	Effective date	Transfer from	Transfer to
Taxation Laws Amendment Act No. 17 of 2017	1 March 2018	Pension or provident fund	RA
Taxation Laws Amendment Act No. 23 of 2018	1 March 2019	Pension or provident fund	Preservation fund. No pre-retirement withdrawal allowed
Taxation Laws Amendment Act No. 20 of 2021	1 March 2022	Preservation fund	Another preservation fund or an RA
Taxation Laws Amendment Act No. 17 of 2023	1 March 2024	Pension or provident fund	Pension or provident fund, if it is an involuntary transfer

TLAA 2024 amendment

The definition of “retirement annuity fund” in section 1(1) and paragraphs 2(1) and 6A of the Second Schedule to the Income Tax Act have been amended to allow a member of an RA to transfer his post-retirement benefit (i.e. after he has reached the age of 55) to another RA without incurring a tax liability, irrespective of whether it is a voluntary or involuntary transfer.

This amendment is effective from 1 March 2025.

The following block can now be added to the one in the previous paragraph to complete the history of post retirement transfers:

Taxation Laws Amendment Act No. 42 of 2024	1 March 2025	RA	Another RA

2. Retirement annuity fund de minimis-commutation

Background

A member of a retirement annuity fund whose interest in the fund is less than the amount prescribed by the Minister of Finance in a Government Gazette is allowed to take his fund benefit as a pre-retirement withdrawal benefit. The prescribed amount was increased from R7 000 to R15 000 with effect from 1 March 2021. This benefit will be taxed on the retirement fund lump sum withdrawal tax table (the withdrawal tax table).

Before the implementation of the two-pot system, it was generally understood that the member’s interest in the

fund consisted of his total fund value at the time, which included the values of each of the member's policies in that fund. The effect of this was that the member's total fund value must have been less than the prescribed amount before he could elect to take it as a pre-retirement withdrawal benefit.

TLAA 2024 amendment

To avoid any confusion, the definition of "retirement annuity fund" in section 1(1) of the Income Tax Act has been amended to clarify that the de minimis-rule applies to the member's interest in his vested component and his retirement component. His interest in his savings component is not taken into account. This means that if a member has not taken any savings withdrawal benefit in the specific tax year, he can take everything in his savings component as a savings withdrawal benefit, which would be taxed at his marginal tax rate, and if the combined value of his vested and retirement components is then less than the prescribed de minimis amount, he may take that as a pre-retirement lump sum benefit, taxable on the withdrawal tax table. If he has already taken a savings withdrawal benefit in that tax year and there is still a balance left in his savings component, that will not be taken into account to determine whether he can take his vested and retirement components as a pre-retirement withdrawal benefit. The member will then only be able to take the balance in his savings component in the next tax year, provided that it is more than R2 000 as required in the definition of "savings withdrawal benefit" in the Income Tax Act.

This amendment is effective from 1 March 2025.

3. Proportionate deduction of maintenance order amounts

Background

The Pension Funds Act provides for the deduction of pension interest payable to a non-member spouse in terms of a divorce order and amounts awarded to a maintenance claimant in terms of a maintenance order from a member's individual account or minimum individual reserve in the fund. A divorce order amount payable to a non-member spouse is taxable in the non-member spouse's hands, on the withdrawal tax table. A maintenance payment is taxable as income in the member's hands.

The Pension Funds Amendment Act No. 31 of 2024 which became effective on 1 September 2024 added a deduction of amounts awarded to a maintenance claimant under an interim maintenance order from a member's individual account or minimum individual reserve in the fund and added that the deduction must be done in accordance with the fund rules or as determined in accordance with the Income Tax Act. The Income Tax Act in turn provides for the pro rata deduction of these amounts across a member's vested, savings and retirement components.

TLAA 2024 amendment

Section 7(11) of the Income Tax Act has been amended to include an interim maintenance order payment as a deemed income accruing to the member.

Similar to a maintenance order, an interim maintenance order-payment will be taxed in the member's hands, and the tax-on-tax principle will apply. To determine the tax that must be deducted from the value of the member's individual account or minimum individual reserve, the formula prescribed in SARS' Interpretation Note 89 (IN89) issued on 1 March 2016 must be used.

This amendment is deemed to have come into operation on 1 September 2024, to coincide with the implementation of the two-pot system.

4. No deemed disposal of a member's interest in a fund on cessation

of residency

Background

When a person ceases to be a South African resident, he is deemed to have disposed of his assets at market value on the date immediately before the day on which his residency ceased, which will then trigger capital gains tax (CGT). This means that even though that person might not have actually disposed of an asset, there will still be CGT payable on the difference between the market value of that asset on the day before he became a non-resident and the value at which the asset was acquired.

The definition of “asset” for this purpose includes for example unit trusts and shares, but excludes immovable property held by that person in South Africa, specific equity shares and cash. The reason for excluding immovable property is that when that property is eventually sold, CGT will be payable at that time.

The value of a member’s interest in a retirement fund should not be included as an asset for CGT-purposes when that member ceases to be a South African resident. If that were the case, the member would be taxed twice: first on cessation of residency, when a deemed disposal would trigger the payment of CGT, and then again on termination of membership. Any lump sum benefit payable on the member’s exit from the fund will be taxed on the lump sum tax tables published in the Rates and Monetary Amounts Acts. If the non-resident member uses his benefit or a part thereof to purchase an annuity, his annuity income will still be taxed in South Africa under section 9(2)(i) of the Income Tax Act; such annuity income will be included as part of the member’s income under paragraph (a) of the definition of “gross income” in the Income Tax Act.

TLAA 2024 amendment

To avoid the double-taxation as referred to above, section 9H(4) of the Income Tax Act has been amended by adding in a new paragraph (g), which excludes the value of a member’s interest in a South African retirement fund from the deemed disposal-provision for CGT purposes when the fund member ceases to be a South African resident.

5. Technical correction

Paragraph 12D of the Seventh Schedule to the Income Tax Act deals with the manner in which contributions made by employers to defined benefit pension and provident funds (occupational funds) must be valued. The TLAA 2024 made technical corrections to this paragraph by deleting the reference to “retirement annuity fund” wherever it appeared and to clarify that when members transfer between occupational funds, there will not be any additional tax consequences at the time of the transfer relating to the amounts already contributed to the transferring fund.

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