



## JLAW IC 4 of 2025: Disallowed contributions

### Introduction

This document discusses what a disallowed contribution is, when to determine what constitutes a disallowed contribution, how disallowed contributions are dealt with and what happens to disallowed contributions on a member's retirement or death.

### 1. What is a disallowed contribution?

Simply put, a disallowed contribution is a contribution that did not previously qualify as a tax deduction. To understand what was not allowed, one first needs to understand what is allowed.

Sections 11F(1) and (2) of the Income Tax Act allows a member who contributes to a pension –, provident – or retirement annuity fund to deduct a specified maximum amount from their annual taxable income. The deduction can be summarised as follows.

The lesser of:

(a) R350,000

(b) 27.5% of the higher of the person's

(i) **remuneration** as defined in Fourth Schedule,

**excluding**

- retirement lump sum benefits
- withdrawal lump sum benefits
- severance benefits

OR

(ii) **taxable income**

• **including**

- passive income
- taxable capital gain

• **excluding**

- retirement lump sum benefits
- withdrawal lump sum benefits
- severance benefits

- **before deducting**

- 11F retirement fund contribution deductions
- 6quat (1C) foreign income rebate
- section 18A donation deduction

(c) **taxable income**

- **excluding**

- taxable capital gain
- retirement lump sum benefits
- withdrawal lump sum benefits
- severance benefits

- **before deducting**

- 11F retirement fund contribution deductions
- 6quat (1C) foreign income rebate
- section 18A donation deduction

(d) **limited** to the actual contributions made by or on the member's behalf, i.e. employer and member contributions.

For a member who only has one source of income (their salary), the maximum deduction will be 27.5% of their salary, to a maximum of R350,000 per annum.

The contributions paid by an employer for the benefit of their employee to a retirement fund are deemed to be an employee contribution and are taxed as fringe benefits in the hands of the member as stipulated in paragraph 2(l) of the Seventh Schedule to the Income Tax Act.

The tipping point, i.e. the remuneration or taxable income amount to qualify for the maximum deduction in a specific tax year is R1,272,727.28.

Section 11F(3) of the Income Tax Act deals with excess contributions as follows:

(3) Any amount contributed to a pension fund, provident fund or retirement annuity fund in any previous year of assessment which has been disallowed solely by reason of the fact that the amount that was contributed exceeds the amount of the deduction allowable in respect of that year of assessment is deemed to be an amount contributed in the current year of assessment, except to the extent that the amount contributed has been—

- (a) allowed as a deduction against income in any year of assessment;
- (b) accounted for under paragraph 5 (1) (a) or 6 (1) (b) (i) of the Second Schedule; or
- (c) taken into account in determining the amounts exempt under section 10C.

There are two types of carryover (or roll-over) provisions relating to non-deductible contributions:

- the first is to carry it over to the next tax year and deduct the excess contributions in that tax year under section 11F of the Income Tax Act, and

- the second is to deduct it from the member's benefit at their retirement or death [paragraph 5 of the Second Schedule to the Income Tax Act] or pre-retirement withdrawal [paragraph 6 of the Second Schedule to the Income Tax Act].

### **Pre-1 March 2016 provident fund contributions**

Contributions to a provident fund were not tax-deductible before 1 March 2016. The alignment of the tax treatment of contributions which came into effect from 1 March 2016 resulted in all contributions made to contributory retirement funds qualifying for a tax deduction in the year the contributions were made. A member of a provident fund therefore did not have contributions before 1 March 2016 which did not qualify as a deduction in the year in which the contributions were made because it exceeded the amount of the deduction allowable in that tax year. That member would then not have had any contributions before 1 March 2016 that would have qualified for a carryover to a following tax year.

The following extract from the Final Response Document on Taxation Laws Amendment Bill, 2016 and Tax Administration Laws Amendment Bill, 2016 of 15 December 2016 confirms this.

#### **3.4. Roll-over of excess retirement fund contributions before 1 March 2016**

(Main reference: section 11(k))

Comment: The proposal to extend the rollover relief for pension funds is applauded, but to disallow the rollover of excess contributions for provident fund contributions goes against the retirement reform objective of "harmonisation" and creates unnecessary distinctions between different types of retirement funds. This will create further confusion and antagonism.

Response: Not accepted. The deduction for retirement fund contributions is provided to taxpayers as an incentive to increase retirement savings and correspondingly it is expected that the taxpayer purchases an annuity with two-thirds of those amounts upon retirement. Allowing provident fund members to rollover previous contributions to receive a deduction would break that principle as they would be receiving a deduction on historical contributions for which there is no requirement to purchase an annuity on retirement.

### **Non-deductible contributions**

A contribution that did not previously qualify as a deduction at all can still be carried over and deducted from a member's lump sum benefit under paragraph 5 or 6 of the Second Schedule to the Income Tax Act.

#### **Example 1**

Carol earned R20,000 in year 1. She had no other income. She contributed R27,500 to a retirement annuity fund from her savings in that year.

She will be entitled to a deduction of R5,500 (27,5% of R20,000) and the balance of R22,000 will carry over to year 2.

In year 2, she once again only earned R20,000, with no other taxable income, and contributed R27,500 to her retirement annuity fund from previous savings.

Again, she will only be entitled to a deduction of R5,500 and the balance will carry over to the next year.

The reason for these contributions not being allowed as a deduction in the year in which the contributions were paid was due to the fact that Carol's taxable income in those years was limited to R20,000, thus restricting the deduction to R5,500 per year.

In year 3, the total contributions that have carried over amounts to R44,000.

In year 3, Carol retires. Her total benefit in the retirement annuity fund is R164,000. Because it is less than the de minimis amount of R165,000, she can take it all in a lump sum.

The R44,000 non-deductible contributions will qualify as a deduction under paragraph 5(1)(a) of the Second Schedule to the Income Tax Act, which allows for the deduction of contributions that did not rank for a deduction against the person's income in terms of section 11F to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member. The contributions of R44,000 formed part of the contributions that were taken into account under the provisions of section 11F in the specific year of assessment but were just not allowed as a deduction in that year of assessment.

After the deduction of the R44,000 carryover contributions, the balance of R120,000 must be taxed on the retirement tax table. Retirement lump sum benefits under R550,000 are taxed at 0%. Provided that Carol has not received any other lump sums from a retirement fund, she will not pay any tax on her R164,000 retirement lump sum benefit.

### Disallowed contributions carryover

For purposes of this document, we will assume that 27,5% of the member's annual remuneration / taxable income is higher than R350,000. Any contribution over R350,000 in a specific tax year will then be a disallowed contribution and will carry over to the next tax year, where it will be added to that year's contributions. If in that tax year the previous year's excess contributions plus the current year's contributions are again over the maximum of R350,000, it will carry over to the next tax year, and so it will continue until the member exits the fund.

### Example 2

(a) Ben's remuneration in year 1 is R1,500,000. He has no other source of income. He is a member of a pension fund to which he contributes 7,5% and his employer 10% and a retirement annuity fund to which he contributes 5%. The contributions made to these two funds are as follows:

**Year 1 Pension fund Retirement annuity fund Ben's contributions** R112,500 R75,000

Ben's **employer's** contributions R150,000 –

Calculation of maximum allowable contribution deduction:

27.5% x R1,500,000

= R412,500

limited to R350,000

Actual contributions = R337,500.

year 1 will be R337,500.

Ben does not have any excess contributions, because his total contributions in year 1 are less than R350,000.

- (b) In year 2, Ben's remuneration increases to R1,600,000. He increases his contributions to the retirement annuity fund to R100,000.

<b>Year 2</b>	<b>Pension fund</b>	<b>Retirement annuity fund</b>
<b>Ben's contributions</b>	R120,000	R100,000
<b>Ben's employer's contributions</b>	R160,000	

Calculation of maximum contribution:

$$27.5\% \times R1,600,000$$

$$= R440,000$$

limited to R350,000

Actual contributions = R380,000.

This is **more** than the maximum of R350,000, which means that the maximum allowable deduction for year 2 will be R350,000.

The excess of R30,000 (R380,000 – R350,000) will carry over to year 3.

- (c) In year 3, Ben's remuneration increases to R1,700,000. He decreases his contributions to the retirement annuity fund to R50,000.

<b>Year 3</b>	<b>Pension fund</b>	<b>Retirement annuity fund</b>
<b>Ben's contributions</b>	R127,500	R50,000
<b>Ben's employer's contributions</b>	R170,000	

Calculation of maximum contribution:

$$27.5\% \times R1,700,000$$

$$= R467,500$$

limited to R350,000

Actual contributions = R347,500.

This is **less** than the maximum of R350,000, which means that the maximum allowable deduction for year 2 will be R347,500.

Because Ben has excess contributions of R30,000 that carried over from year 2 and his contribution deduction for year 3 is less than R350,000, Ben qualifies for an additional deduction in year 3 equal to the difference between R350,000 and R347,500, limited to R30,000. He can therefore get an additional R2,500 as a deduction in year 3, and the balance of R27,500 (R30,000 – R2,500) will carry over to year 4.

To summarise:

	Year 1	Year 2	Year 3
Salary	R1,500,000	R1,600,000	R1,700,000
Total contributions	R337,500	R380,000	R347,500
Deduction	R337,500	R350,000	R350,000
Carryover -	R30,000	R27,500	

## 2. When are disallowed contributions determined?

Members of retirement funds are not always aware of the fact that a contribution made in a specific tax year does not qualify for a deduction under section 11F of the Income Tax Act in that same tax year.

The maximum allowable deduction is based on the member's remuneration or taxable income in a specific tax year. To determine this, SARS must first do an assessment of the member's income for that specific tax year. This is only done in the next tax year and depending on when the member submits their tax return, might even only be finalised by November / December of the next year. It is not possible to determine how much of the current tax year's contributions will qualify for a deduction under section 11F and what portion thereof will constitute the excess contributions to be included as disallowed contributions. The maximum allowable deduction in a specific tax year and what constitutes disallowed contributions are based on the member's taxable income and the contributions made in the previous tax year.

The carryover of excess contributions is automatically accounted for in the member's tax assessment. SARS calculates the deductible amount each year, taking into account the member's current year's contribution, taxable income, and any carried-over amounts from previous years. It will be recorded as follows on the member's ITA34 – Notice of Assessment:

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When the fund applies for a tax directive on a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit, SARS will only include the disallowed contributions as at the previous tax year end. Any contributions made in the current year will then be included in the next tax year.

## 3. How are disallowed contributions dealt with?

It is important to note that the member does not have a choice as to how and when the disallowed contributions should be taken into account. When a member exits a retirement fund and takes a lump sum benefit, the disallowed contributions across all the funds that the member contributed to are added together. It is then deducted from the first lump sum that becomes payable, irrespective of the fact that the disallowed contributions might not have been made on that fund, and then the applicable tax table is applied on the balance.

Paragraph 2(1)(a) of the Second Schedule to the Income Tax Act, read together with paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, confirms that any amount received by or accrued to that person by way of a lump sum benefit derived in consequence of or following upon a member's retirement, death and withdrawal less any deduction permitted under the provisions of paragraph 5 or 6 constitutes the member's retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit. A retirement fund lump sum benefit is taxed on the retirement fund lump sum benefit tax table (retirement tax table), where the first R550,000 is taxed at 0%, and the retirement fund lump sum withdrawal benefit (withdrawal tax table) is taxed on the retirement fund lump sum withdrawal benefit tax table, where the first R27,500 is taxed at 0%. The implication of the underlined phrase above is that before it is determined what constitutes a retirement fund lump sum benefit

or retirement fund lump sum withdrawal benefit, certain deductions must first be made from the lump sum. One such deduction is contributions that did not rank for a deduction against the person's income in terms of section 11F to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member as referred to in paragraph 5(1)(a) (for lump sum retirement / death benefits) and paragraph 6(1)(b)(i) (for lump sum withdrawal benefits). The benefit that is taxed on the applicable tax table is therefore the benefit after the disallowed contributions have been deducted. To put it differently, the benefit that will be taxed on the tax table will be the member's fund benefit less the allowable deductions, such as disallowed contributions.

### Example 3

In addition to the two contributory funds that he is a member of, Ben also transferred his resignation benefit from his previous employer's pension fund to a pension preservation fund in August 2023. He takes a pre-retirement withdrawal of R100,000 from that fund in year 4. His previously disallowed contributions at the end of year 3 amounted to R27,500. He has not taken any other lump sum benefit from a retirement fund before and has also never been retrenched.

The tax payable on his retirement fund lump sum withdrawal benefit will be calculated as follows:

Lump sum fund benefit less disallowed contributions

$$R100,000 - R27,500 = R72,500$$

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Tax on R72,500

#### **Taxable income from lump sum benefits Rate of tax**

0 – R27,500 0%

R27,501 – R726,000 18% of the amount above R27,500

$$= 18\% \text{ of } (R72,500 - R27,500)$$

$$= 18\% \text{ of } R45,000$$

$$= R8,100$$

## 4. Disallowed contributions at retirement

When a member retires, they must use their retirement component and at least two-thirds of their vested component to purchase an annuity, subject to the de minimis\* rule. The balance of their retirement benefit can then be taken as a lump sum.

\* If the value of two-thirds of the member's non-vested benefit in their vested component plus their retirement component is less than R165,000, they may take their total retirement benefit as a lump sum.

### Lump sum

As stated in paragraph 3 above, the disallowed contributions must first be deducted from the retirement fund lump sum benefit and then the tax must be calculated.

#### Example 4

Since he took the pre-retirement withdrawal benefit from his pension preservation fund, Ben has made additional voluntary contributions to his pension fund which exceeded the R350,000 limit. He has not made any contributions to his retirement annuity fund since year 2. Ben has now reached the age of 55. He decides to retire from his retirement annuity fund and take the maximum lump sum retirement benefit from his total fund benefit of R3,000,000. His disallowed contributions to the pension fund at the end of the previous tax year amounted to R100,000.

Assuming that all the contributions to the retirement annuity fund were made prior to 1 September 2024 and that it falls within his vested component, he will be able to take up to one-third of his total retirement benefit as a lump sum.

The tax payable on the retirement fund lump sum will be calculated as follows:

a. Determine the taxable lump retirement benefit:

Lump sum less disallowed contributions

$$R1,000,000 - R100,000 = R900,000$$

b. Calculate tax payable on R900,000

Step 1: Add together current taxable benefit + previous benefits

$$R900,000 + R72,500 = R972,500$$

Step 2: Calculate tax on total, using current table

Tax on R972,500, using retirement tax table  
R39,600 + 27% of the amount above R770,000  
R39,600 + (27% of R202,500)  
R39,600 + R54,675  
= R94,275

Step 3: Add together previous benefits

R72,500

Step 4: Calculate tax on previous benefits, using current type table

Tax on R72,500, using retirement tax table  
Because the benefit is less than R550,000, the tax rate is 0%  
= R72,500 x 0%  
= R0

Step 5: Deduct tax on previous benefits from tax on total benefits

R94,275 – R0  
= R94,275

**Note:** If Ben had not taken the pre-retirement withdrawal from his pension preservation fund, the tax would have been R74,700, calculated as follows:

R39,600 + 27% of the amount above R770,000  
R39,600 + (27% of R130,000)  
R39,600 + R35,100  
= R74,700

If you add the R94,275 tax payable on the retirement lump sum to the R8,100 tax that was paid on the pre-retirement withdrawal from the pension preservation fund as calculated in example 3, the total tax payable comes to R102,375, which is R27,675 more than the tax that would have been payable if the pre-retirement withdrawal was not made. This illustrates the punitive tax effect of making a pre-retirement withdrawal.

If a member's taxable retirement fund lump sum benefit after the deduction of his disallowed contributions is less than that part of the lump sum taxed at 0%, the member effectively forfeits a part of the lump sum that could have been taken tax-free, unless they take a retirement fund lump sum benefit from another fund.

### **Annuity**

Any disallowed contributions not taken into account against the lump sum will qualify for exemption on the member's annuity income as provided for in section 10C(2) of the Income Tax Act, which reads as follows:

- (2) There shall be exempt from normal tax in respect of the aggregate of qualifying annuities payable to a person an amount equal to so much of any contributions to any pension fund, provident fund and retirement annuity fund that did not rank for a deduction against the person's income in terms of section 11F as has not previously been—
- (a) allowed to the person as a deduction in terms of the Second Schedule; or
  - (b) exempted from normal tax in terms of this section,

in respect of any prior year of assessment.

It is important to note that this is an **exemption**, and **not a deduction**. The relevance of this is that the tax must be paid first, and then the exemption will be applied. This means that the insurer that pays the annuity must deduct the tax payable on it from the annuity income. The annuitant will receive their annuity income net of PAYE, but if any portion of the annuity income qualifies as an exemption, the tax paid on it is refundable in full on submission of their annual tax return. At the end of the tax year, the insurer issues an IRP 5, with the code 3610 reflecting the annuity income received in that year. SARS will then use this information to determine which portion of the annuity income is exempt from tax. In short – the annuitant must pay the tax first and then claim it back via their tax return at the end of the tax year.

### Example 6

#### Year 1:

- Roy retires on 31 May.
- His salary from 1 March to 31 May is R300,000.
- He contributed R37,500 to his retirement fund from 1 March to 31 May.
- He has disallowed contributions of R100,000 as at the end of the previous tax year.
- He only takes R30,000 as a lump sum and uses the balance to purchase an annuity. The first monthly annuity income of R45,000 is paid to him on 1 July.

R30,000 of his disallowed contributions will be deducted from his lump sum benefit, resulting in there being no tax payable on this benefit.

- The insurer will deduct tax on each annuity income payment made to Roy, and the R70,000 exemption will be applied against his annuity income of R315,000 for the period from July to February when he submits his tax return year 1.

Gross income R300,000 + R315,000	R615,000	
	Less exempt annuity income under section 10C	R70,000
	As at the end of the previous tax year	
	Income R545,000	
	Less contributions allowed as a deduction under section 11F	R37,500
	Maximum allowable deduction is 27,5% of income (R149,875), limited to the actual contribution made, which was R37,500	
		Taxable income R395,125

#### Year 2:

- Roy does consulting work from which he earns an income of R800,000.
- He contributes R400,000 of his consulting income to a retirement annuity fund.

His annuity income from 1 March to 28 February is R550,000.

Gross income	R800,000 + R550,000	R1,350,000
Less exempt annuity income under section 10C	As at the end of the previous tax year	-
Income		R1,350,000
Less contributions allowed as a deduction under section 11F	Maximum allowable deduction is 27,5% of income (R371,250), to a maximum of R350,000	R350,000
Taxable income		R1,000,000

**Year 3:**

- Roy's only income from 1 March to 28 February is his annuity payments of R600,000. • He

does not make any contributions to his retirement annuity fund.

Gross income		R600,000
Less exempt annuity income under section 10C	As at the end of the previous tax year: R400,000 – R350,000	R50,000
Income		R550,000
Taxable income		R550,000

## 5. Disallowed contributions on death

### Death of a member

When a member dies, the trustees of the fund must decide how to distribute the member's death benefit. The beneficiaries can decide whether they want that portion of the benefit allocated to them paid as a lump sum, use it to purchase an annuity, or a combination of the two.

#### a. Lump sum

Paragraph 3 of the Second Schedule to the Income Tax Act states that lump sum benefits payable upon the death of a member of a retirement fund are deemed to have accrued to the member immediately prior to their death. It is taxed in the hands of the deceased on the lump-sum retirement tax tables, after the deduction of contributions that did not previously qualify as a deduction.

If a beneficiary opts to have their portion of the benefit paid as a lump sum, any disallowed contributions will qualify as a deduction under paragraph 5 of the Second Schedule. The same principles as those applying to retirement lump sums as set out under paragraph 4 above will apply, i.e. the disallowed contributions will first be deducted and then the tax will be calculated on the balance of the benefit, using the retirement tax table.

Section 3(3)(e) of the Estate Duty Act No. 45 of 1955 deems so much of the amount of any contribution made by the deceased in consequence of membership or past membership of any pension fund,

provident fund, or retirement annuity fund, as was allowed as a deduction in terms of paragraph 5 of the Second Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), to determine the taxable portion of the lump sum benefit that is deemed to have accrued to the deceased immediately prior to his or her death as property of the deceased. The disallowed contributions qualifying as a deduction under paragraph 5 of the Second Schedule will accordingly be included as deemed property in the deceased member's estates and will be subject to estate duty.

#### b. Annuity

The section 10C exemption only applies to a compulsory annuity taken out by a member upon that member's retirement. It will not be available to a beneficiary who opts to take their allocated benefit as an annuity.

#### Death of an annuitant

When an annuitant/pensioner dies, the balance of their living annuity or the part of a life annuity payable for the remainder of the guaranteed period will be dealt with as set out in the fund's rules if it is an in-fund annuity, or, in the case of an out-of-fund annuity, paid to the annuitant's nominated beneficiaries, or in the absence of such beneficiaries, to the deceased annuitant's estate. The beneficiaries can decide whether they want the part of the benefit allocated to them paid as a lump sum, use it to purchase an annuity, or a combination of the two.

#### a. Lump sum

Paragraph 3 of the Second Schedule to the Income Tax Act also applies to lump sums payable upon the death of an annuitant. The lump sum is taxed in the hands of the annuitant, not the beneficiary who chooses to receive the part of the annuity allocated to them as a lump sum. Because the annuity was purchased following the member's retirement from the fund, it is highly likely that the member already took that part of their lump sum that is taxed at 0%. The beneficiary must take this into account before exercising their options.

Any disallowed contribution that did not qualify as a deduction against the member's retirement lump sum under paragraph 5 of the Second Schedule or as an exemption under section 10C against their annuity income at the time of the annuitant's death will be available as a deduction against the lump sum payable to a beneficiary.

Similar to the scenario where a member dies, that any contributions that did not previously qualify as deductions (ie during the deceased annuitant's lifetime) and that will now be allowed as a deduction under paragraph 5 will be included as deemed property in the annuitant's estate and will accordingly be subject to estate duty in terms of section 3(3)(e) of the Estate Duty Act.

Because disallowed contributions are always calculated in arrears, it may delay the finalisation of the annuitant's estate.

In summary:

- The beneficiary will enjoy the benefit of the deduction of the disallowed contributions against a lump sum payable.
- The disallowed contributions will be included as a deemed asset in the deceased annuitant's estate and will be subject to estate duty.

#### b. Annuity

If a beneficiary opts to use the portion of a deceased annuitant's annuity allocated to them to purchase an annuity, that beneficiary will not be entitled to claim any disallowed contributions not utilised by the annuitant

during their lifetime as an exemption under section 10C. The disallowed contributions will not be a deemed asset in the deceased annuitant's estate and will not attract estate duty.

## 6. Summary

- Disallowed contributions are those contributions that could not be deducted in previous tax years because it exceeded the maximum allowable deductible contributions in those years.
  - The maximum tax-deductible contributions (and by implication disallowed contributions) are only calculated at the end of a tax year and then becomes available to be used in the next tax year.
- Disallowed contributions are taken into account against the first available lump sum benefit that becomes payable.
- Disallowed contributions will be deducted from a lump sum benefit to determine the taxable benefit, after which the remainder will then be taxed on the applicable tax table. Any remaining disallowed contributions not included in the lump sum benefit will then qualify for an exemption against annuity income, but only in the next tax year.
- The section 10C exemption only applies to the annuity income of the member, not to subsequent beneficiaries.
- When a deceased annuitant's beneficiary chooses a lump sum benefit, any disallowed contributions will be included as an asset in the deceased's estate and will be subject to estate duty. This does not apply if a beneficiary chooses to use the benefit to purchase an annuity.

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10 October 2025

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