SIMEKA

member of Sanlam group

Retirement Matters 2/2024

The two-pot retirement system - update

To implement the two-pot retirement system, three pieces of legislation must be finalised. The General Election will be held on 29 May 2024. After the election, Parliament will be reconstituted, which could result in delays in getting the legislation promulgated in time for funds to ensure the implementation thereof by 1 September 2024. The process is however being prioritised in Parliament.

1. **The 2023 Revenue Laws Amendment Bill (RLAB)**
   - The RLAB proposes the necessary changes to the Income Tax Act.
   - It is possible that the Parliamentary process in relation to the RLAB will be finalised by the end of March 2024 and that the RLAB will be promulgated soon after that.

2. **The 2024 Draft Revenue Laws Second Amendment Bill**
   - This Bill addresses further technical corrections to the Income Tax Act, in addition to the RLAB.
   - The opportunity to file comments with National Treasury and SARS remains open until 31 March.

3. **The 2024 Pension Funds Amendment Bill**
   - The Bill, which proposes the necessary amendments to the Pension Funds Act, has been tabled before Parliament. Public hearings on the Bill were held on 12 March 2024 and clause-by-clause deliberations by Parliament's Standing Committee on Finance are scheduled for 26 March 2024.
   - In addition, National Treasury on 11 March 2024 published the proposed amendments to various pieces of legislation governing pension funds regulated by other laws. The amendments to those pension laws will be proposed for inclusion in the Pension Funds Amendment Bill. The amendments provide the necessary legislative amendments required to effectively implement the two-pot retirement system changes to funds regulated by other laws and relate to the Government Employees Pension Law, the Post and Telecommunications-related Matters Act and Transnet Pension Fund Act.
   - On 19 March 2024 National Treasury responded to the public hearings which were held on 12 March before Parliament's Standing Committee on Finance.

It is unlikely that the latter two bills will be finalised before Parliament closes in April 2024. National Treasury does not envisage any delays but noted that the legislative process is a Parliamentary process that they cannot control.

Rule amendments

The FSCA published Communication 3 of 2024, dealing with requirements for rule amendments to be submitted to give effect to the two-pot retirement system. The FSCA requested that all rule amendments in respect of the two-pot system should be limited to the two-pot system and no other rule changes should be added to the amendment.

Apart from the requirements for rule amendments, the FSCA has also highlighted the requirement that all funds must communicate the two-pot proposed changes to their members. Such communication should be simple, clear, and comprehensive. The communication should alert members to the possible impact that a savings withdrawal benefit will have on their retirement benefit. The FSCA may request a copy of such communication to members.

OPFA Communication 1 of 2024: Calculation of late payment interest and the *In Duplum* Rule

- **Late payment interest**

The Office of the Pension Funds Adjudicator (OPFA) released OPFA Communication 1 of 2024 on 5 February 2024, in which they state their view regarding the day from which late payment interest in terms of section 13A of the Pension Funds Act should be calculated. The OPFA's view is that where contributions are paid late, interest should be calculated from the first day of the month following the month for which the contributions are payable.

This does not align with FSCA Communication 15 of 2023, in which it was stated that late payment interest is payable from the 8th day following the month for which the contributions are payable.

Comment: *The differing views place all stakeholders (funds, employers and administrators) in a difficult position regarding the interpretation of section 13A. Funds may apply* *the interpretation of calculating the interest from the first day of the month, whereas employers may disagree and follow the interpretation of interest being payable from the 8th.*

It is Simeka's view that the legislation needs to be made clear to avoid different interpretations, and we will propose this to the regulator. In the meantime, Simeka recommends that the OPFA's view be followed.

- ***In duplum* rule**

The OPFA now agrees with the High Court's ruling in the case of *Municipal Workers Retirement Fund v Umzimkhulu Local Municipality* that the *in duplum rule* does not apply to late payment interest. Refer to In Perspective 4 of 2023 where the issue was discussed.

Trends and emerging risks

During 2023, the FSCA published its first Customer Behaviour and Sentiment Study. The study comprises a survey of 1 200 adult respondents across all provinces and population groups. It provides an overview of how retail customers in South Africa engage with and view financial products and services and the outcomes of using such financial products or services. The study will assist the FSCA to develop and implement a more customer-centric approach to regulation, supervision, and policy. Retirement funds can also use the study to gain a better understanding of perceptions towards financial products. The full study is available on the FSCA's website.

The following was found in the study:

- Customers don't engage with their products and/or services, unless getting to the point that they want to complain or cancel.
- Customers expressed a desire to own investment products, equating owning investment products with wealth and financial stability. However, they also indicated that investment products are not well understood.
- Only around 20% of respondents indicated that retirement products are important to get, with a miniscule percentage considering it important for their children to get such products. This suggests that there is not an appreciation of the need to start to save for retirement early on.
- Respondents expressed frustration toward retirement products. Retirement providers were criticised for not adequately explaining pay-out rules and regulations and for giving poor advice regarding which funds to participate in.
- 40% of the respondents expressed a desire to communicate with their financial institution in person.
- When asked whether they received easy-to-understand information from their financial institutions, life insurance and retirement funds scored the worst.
- Almost half of respondents regret the take-up of products. Retirement funds are one of the most common financial products listed as "regretted". This sentiment was most pronounced by respondents over the age of 50 with 16% in this age group more likely to report regretting the product than other age groups. It is important to note however that participants do not regret belonging to a retirement fund, but rather the specific fund/annuity that they opted for and now feel locked into.

***Comment:** It is recommended that funds should revisit their fund communication strategies to establish where improvements can be made to educate and empower members more effectively.*

- Insurance providers are among those that are not well trusted, which may be partly attributed to a misalignment in the understanding of insurance; customers talk about these products as an 'investment' rather than risk protection.

***Comment:** This also pertains to retirement funds. Members should be made aware of the difference between their retirement savings and their risk cover.*

- Customers often feel overwhelmed by the range of choices available.

***Comment:** Members need to understand any choices available in their retirement fund, such as risk benefits and investment choices.*

- For investments and retirement funds, there were negative sentiments towards low rates of return.

***Comment:** Members must be made aware that retirement savings are a long-term investment. Most retirement fund investments should beat inflation over the long term.*

Members must also realise that withdrawing from funds will influence their retirement benefit. The effect of withdrawing from the two-pot system savings pot must be emphasised. Members should be made aware of tax advantages of retirement funds as opposed to other investment products.

Interpretation Ruling on section 37C and paid-up members, deferred retirees and unclaimed benefits

The FSCA has issued Interpretation Ruling 1 of 2024, which came into effect on 4 March 2024, clarifying the position regarding the payment of death benefits of paid-up members, deferred retirement members, and unclaimed benefits (refer to Retirement Matters 5 of 2023 where the issue was first discussed).

It states the following:

- Section 37C of the Pension Funds Act provides that benefits payable as a consequence of a member's death does not form part of their estate. Therefore, if the death of the member causes the benefit to become payable, it falls within the ambit of section 37C.
- Since paid-up members and deferred retirement members are "members", section 37C applies upon their death.
- If a member (including a deferred retirement member and a paid-up member) has become entitled to claim a benefit, and the fund has already received a written payment or transfer instruction prior to a member's death, section 37C will not be applicable.
- An unclaimed benefit is not due and payable as a result of the member's death, but rather as a result of their exit from the fund and section 37C therefore does not apply, and payment must be to the unclaimed member's estate. Similarly, where an unclaimed benefit arose because of a death benefit allocated to a beneficiary, section 37C does not apply upon the death of the beneficiary entitled to that allocated portion of the death benefit.

Trustee training toolkit

The FSCA has sent invites regarding the launch of the second phase of the trustee toolkit. The first phase contains the first 11 modules and is due to be completed by 26 March 2024 by board members who were in office on 26 September 2023 and by new board members within six months of appointment. The second phase contains modules 12 to 22.

Q&A

I am a pensioner in receipt of a living annuity. Can I transfer the capital amount of my living annuity tax-free to a country I plan to emigrate to?

It is not possible for a person already in receipt of an annuity (pension) to take such an annuity in a cash lump sum. You can only cash in your benefit before you started to receive your monthly pension after having been a non-resident of South Africa for three years. The withdrawal will however in such a case be taxable as a withdrawal benefit.

The proposed two-pot system changes in its current form will make it possible for members of pension and provident funds to cash in their benefit after being a non-resident for three years – this will be before and after retirement from employment. The benefit will always be taxable.

Will members be able to make a seed capital withdrawal come 1 September 2024 even if the relevant legislation has not been promulgated?

The Revenue Laws Amendment Bill must be promulgated first and fund rules need to be registered to allow for payment.

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