Ref #:774707

Submission File

15 July 2023

National Treasury / South African Revenue Service

BY E-MAIL:
2022AnnexCProp@treasury.gov.za
acollins@sars.gov.za

Dear National Treasury and Ms Collins

SAICA COMMENTS ON THE 2023 DRAFT REVENUE LAWS AMENDMENT BILL AND 2023 DRAFT REVENUE ADMINISTRATION AND PENSION LAWS AMENDMENT BILL

The Employees' Tax Committee, on behalf of the South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make a submission to the National Treasury (NT) and the South African Revenue Service (SARS) on the 2023 Draft Revenue Laws Amendment Bill ("RLAB") and 2023 Draft Revenue Administration and Pension Laws Amendment Bill.

SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the matters outlined in the following paragraphs, please do not hesitate to contact us.

Yours sincerely

Elizabete Da Silva	**Lesedi Seforo**
Chairperson: SAICA Employees Tax Committee	**Project Director: Tax Advocacy**

The South African Institute of Chartered Accountants

Clause 1(1) – Definition of "Savings Component"

1. Paragraph (g) of the 'savings component' definition is applicable on death of a taxpayer. In terms of this paragraph the savings component is either:

   - Paid to a nominee or dependant of the deceased taxpayer or to his estate in the absence of such nominee/dependant and deemed to be a 'lump sum benefit'; or

   - *Allocated to the retirement component of that fund and paid to a nominee or dependant of the member or former member or to the retired member in the manner as contemplated in paragraph (e) of the definition of "retirement component"*

2. It is not clear who makes the election regarding whether the savings component should be paid to the nominee/dependant/estate, or allocated to the retirement component of the relevant fund. It is also unclear when such election should be made or such discretion should be exercised.

3. Submission: Clarity is sought in this regard.

Clause 1(1) – Definition of "Vested Component"

4. Paragraph (b) of this definition provides that provident fund members that were over the age of 55 on 1 March 2021 will automatically be moved to the new two-pot retirement regime. Such members may then elect to opt out of the new two-pot system and remain in the current 'regime'. As at 1 March 2024, a fund will thus have to administer the creation of the two pots and thereafter allocate the member's future contributions accordingly.

5. It may take a few months, post-March 2024, for a provident fund member to communicate his election to opt out of the two-pot regime and remain in the current regime. In such an instance, the wording currently proposed for the definition of 'vested component' results in the following:

   1) The fund must create the two pots by 1 March 2024,
   2) The fund must then appropriately allocate the member's contributions to the savings and retirement components,
   3) Upon receipt of the member's election to opt out of the two-pot regime and revert to the current regime, amounts previously allocated to the savings/retirement components must be moved back into the vested component , and then
   4) The savings and retirement components previously created must subsequently be deleted.

6. In a situation where such provident fund members automatically remain in the current regime (as at 1 March 2024) and instead have to elect to opt into the new two-pot system, there is no administrative work for fund administrators to perform by 1 March 2024 if the fund member has not yet communicated his election to opt into the two-pot regime. In other words, the provident fund need not create the savings and retirement components at that point.

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za

7. Where the aforementioned “opt-in” approach was to be adopted, in the event that it takes the member a few months to communicate his election to move to the two-pot regime, the only administrative work necessary to be done by fund administrators is for:

    1) the fund to create the two pots; and
    2) move the funds accumulated in the vested component since 1 March 2024 into the two pots.

8. Submission: Paragraph (b) of the ‘vested component’ definition should instead read:

~~no~~ contributions may be made to this component on or after 1 March 2024, except in the case of a person who was a member of a provident fund and is still a member of the same provident fund and who was 55 years of age or older on 1 March 2021; Provided that where the above-mentioned member has elected to make contributions to ~~this component~~ ***[the savings component and the retirement component]*** *on or after 1 March 2024, that member may not be allowed to make contributions to the ~~savings component or the retirement component~~* ***[vested component].***

Clause 1(1) – Cessation of residency and emigration

9. This matter was raised previously in our comments to the 2022 Taxation Laws Amendment Bill, Tax Administration Laws Amendment Bill and Revenue Laws Amendment Bill.

10. In terms of the new two-pot system, it is proposed that when an individual ceases to be a tax resident (emigrates) for an uninterrupted period of three years, or leaves South Africa at the expiry date of a visa, the individual member will be allowed to withdraw all the funds from the different pots.

11. The three-year waiting period poses the following practical problems as were explained in the SAICA submission on the draft TLAB2020 and these are once again set out below as we are still concerned that these changes will result in many practical and technical challenges for taxpayers, NT and SARS.

12. The definition of “resident” for natural persons relies on whether a natural person is “ordinarily resident" in the Republic or whether they meet a time-based “physical presence” test. If a natural person does not meet either of the tests, that person will not be considered a resident. The test for whether a natural person is not a resident consequently does not require that status to endure for an 'uninterrupted period of three years or longer'.

13. To arbitrarily require a three-year waiting period for retirement fund members to access their pre-retirement lump sum withdrawal benefits is inconsistent with the definition of “resident” and other existing provisions in the Income Tax Act (such as sections 9H and 108 of the Income Tax Act) which have immediate tax consequences when ceasing to be a resident.

14. The three-year waiting period is clearly at odds with the existing tax treatment of natural persons who cease to be resident for tax purposes and has the potential to cause

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WEB saica.co.za | accountancysa.org.za

financial hardship due to double taxation arising as the country to which the person has emigrated may (also) have taxing rights as to these amounts that are paid out after three years.

15. Submission: Considering that this is a fundamental policy shift, consideration should be given to the effects of the above (which to a certain extent result in a penalty on emigration) and the need to renegotiate double taxation agreements.

16. The requirements pertaining to the withdrawal of retirement fund lump sums should be aligned with the requirements for ceasing to be a resident as defined in section 1 of the Income Tax Act.

Clause 4.1 – Introduction of paragraphs 2(1)(*d*) and 6B in the Second Schedule

17. The proposed paragraphs 2(1)(*d*) states:

"…the amount to be included in the gross income of any person for any year of assessment in terms of paragraph (e) of the definition of "gross income" in section 1 shall be…

"any amount transferred for the benefit of that person within the same fund as contemplated in paragraphs 6B(a) or 6B(b)…less any deductions permitted under the provisions of paragraph 6B.''.

[Own emphasis]

18. Paragraphs 6B(*a*) and 6B(*b*) then refer to transfers from the savings component to the retirement component (or vice versa) within the same retirement fund.

19. It appears that these intra-fund transfers will require fund administrators to apply for a tax directive.

20. This does not seem to be a reasonable proposition and will be a significant administrative burden to place on the administrators as an individual could elect to make intra-fund transfers from one component to another on a monthly basis, which would require a tax directive for each transfer.

21. Submission: The requirement for fund administrators to apply for a tax directive where an amount is transferred from the savings component to the retirement component (or vice versa) of the same fund should be removed. reconsidered.

Clause 6 – Amendment to paragraph 9 of the Fourth Schedule

a. Referencing of incorrect provision

22. Clause 6(1) of the draft RLAB notes:

"Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (a) of the following item…"

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[Own emphasis]

23. Submission: The reference to subparagraph (2) above is erroneous and should instead be subparagraph (3).

b. Large volume of withdrawals and tax directive applications

24. The draft RLAB proposes an amendment to paragraph 9(3)(*a*) of the Fourth Schedule to classify a ‘savings withdrawal benefit’ as a lump sum received by a taxpayer from a retirement fund. Employees’ tax must then be deducted from this lump sum.

25. The relevant fund must determine the amount of tax to be deducted from this lump sum by applying for a tax directive from SARS. SARS will then issue a directive to the fund, confirming the amount of employees’ tax to be deducted from the savings withdrawal benefit.

26. For a few months beginning on 1 March 2024, fund administrators expect to receive a significant number of applications from fund members seeking to receive their savings withdrawal benefits.

27. It appears that the proposed amendment to para 9(3)(*a*) will require that fund administrators apply for a tax directive from SARS for each withdrawal application received from a fund member.

28. Assuming this is indeed the case, this would place a significant administrative burden on fund administrators, who will have to process a very large number of tax directive requests not only during the initial period from 1 March 2024, but on a continuous basis thereafter. There is also the concern of whether the SARS system is able to manage such a high volume of individual directive requests from fund administrators.

29. Submission: An alternative should be provided to the current proposal that a tax directive must be requested for each withdrawal request from a fund member. A potential solution would be a graduated tax rate applicable to the savings withdrawal benefit, based on the amount/value of the withdrawal.

30. Alternatively, a fixed standard rate may be applied to all such withdrawals, which is then balanced out on assessment when the individual files a tax return for the relevant year of assessment.

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