

Standing Committee on Finance (SCoF): Draft Response Document

8 March 2016

Draft Response Document from National Treasury to SCOF on the Revenue Laws Amendment Bill, 2016

1. BACKGROUND

1.1. PROCESS

National Treasury published a media statement on 18 February 2016 titled “Tax benefits continue, annuitisation postponed” which explained that Government was proposing a postponement of the requirement for provident fund members to purchase an annuity until 1 March 2018. The statement described how the amendments to the tax deductibility of contributions to retirement funds would continue from 1 March 2016 as legislated, but that the provisions in the Taxation Laws Amendment Acts 2013, 2014 and 2015 relating to annuitisation for provident fund members and the ability to transfer tax-free from pension funds to provident funds would be postponed until 1 March 2018. The Revenue Laws Amendment Bill, 2016 (RLAB) was tabled in Parliament on 24 February 2016 to give effect to these proposals.

The Standing Committee of Finance (SCoF) called for public comment on the RLAB and held public hearings relating to the content of the Bill on 3 March 2016. This draft Response Document provides the National Treasury’s response to comments received on the RLAB.

1.2. LEGISLATION

The Taxation Laws Amendment Act, 2013 included provisions to harmonise the tax treatment of contributions to retirement funds by allowing for a tax deduction of up to the lesser of: 27.5 per cent of the greater of taxable income or remuneration; or R350 000. Along with the simplified tax deduction, provident fund members would be required to purchase an annuity on contributions made after the effective date of the proposals, but provident fund members over the age of 55 would be unaffected. The effective date of the reforms was 1 March 2015.

After consultations within NEDLAC forums and some of its constituency members in the latter part of 2014, and after consideration by the SCoF, the effective date of the retirement reforms was delayed to 1 March 2016. This was effected through the Taxation Laws Amendment Act, 2014 which amended the Taxation Laws Amendment Act, 2013 to revise the effective date to 1 March 2016, and which also included other amendments to the Income Tax Act to provide further detail on aspects of the reforms relating to the valuation of defined benefit contributions (section 12D) and vested rights for provident fund members.

The Taxation Laws Amendment Act, 2015 extended the coverage of the requirements to purchase an annuity to other retirement funds that were inadvertently excluded and increased the threshold at which individuals would be required to purchase an annuity from R150 000 to R247 500 to mitigate any negative consequences of annuitisation on those with lower

incomes and retirement benefits. No change was made to the effective date of the reforms which remained as 1 March 2016.

The proposed changes to these Acts in the RLAB include postponing the requirement to purchase an annuity for contributions that are made after 1 March 2018 for provident fund members until 1 March 2018. The provisions relating to vested rights for provident fund members are also amended in the RLAB, where provident fund members who are over the age of 55 on 1 March 2018 would not be required to purchase an annuity on retirement (including for contributions made after 1 March 2018). The ability to transfer tax-free from a pension fund or pension preservation fund to provident fund or provident preservation fund is also delayed to 1 March 2018 to avoid a situation where individuals could transfer pension fund balances that received a tax deduction to a provident fund which could then be taken as a lump sum on retirement. The RLAB also removes the two year review on the impact of annuitisation and fixes a legislative error which could potentially cap the deduction for the deemed employer contribution to a defined benefit fund. The RLAB does not change the tax deductions on retirement contributions (which will proceed as legislated on 1 March 2016) or the minimum threshold at which a member is required to purchase an annuity at retirement, which will increase to R247 500 on 1 March 2016.

1.3. PUBLIC COMMENTS

There were seven written responses received (refer to Annexure A), comprising two industry associations, two businesses, two trade union federations and one individual on the RLAB. Two representatives presented their responses orally during the public hearings hosted by the SCoF on 3 March 2016.

Comments that provided suggestions of technical corrections to the legislation have not been included in this response document, but will be considered for further Annexure C technical amendments in the draft Taxation Laws Amendment Bill later in the year. These relate to fringe benefits for contributions being paid out of the employer surplus accounts, vested rights for forced transfers and others.

2. RESPONSES TO COMMENTS RECEIVED

2.1. Postponing the requirement to purchase an annuity for provident fund members

Comment: The National Treasury statement on 16 February stated that it would look at “a formula that will allow a technically appropriate way to allow the tax deduction to provident fund members for two years”. There is no formula in the RLAB and any change to the tax deduction will have implications for the design of packages for employees. Clarity is required in this regard. It also appears that the *de-minimis* threshold only increases to R247 500 on 1 March 2018 as it is shown in the RLAB. Tax free transfers from pension funds to provident funds should also be delayed.

Response: Misplaced. The official National Treasury media statement on 18 February 2016 states that the provision where the “tax deduction for contributions to all retirement funds (including provident funds) will increase to 27.5 per cent of the greater of taxable income or remuneration, up to a cap of R350 000 per year” will continue as scheduled from 1 March 2016. The RLAB does not delete the sections in the 2015 Taxation Laws Amendment Act which increase the *de-mimimis* (sections 3(1)(n), 3(1)(s) and 3(1)(zB)),

meaning these provisions stand and the threshold will increase to R247 500 from 1 March 2016. As per the RLAB and the media statement, the ability to transfer tax free from pension funds to provident funds has also been delayed to 1 March 2018.

Comment: The relevant aspects of the Acts have been through an extensive and democratic process of consultation dating back to 2013 with opportunities for stakeholders to address Parliament and express their concerns. Disappointed that these amendments have been postponed at the last minute and the changes will create further confusion, uncertainty and a lack of trust in the retirement system. The costs associated with changing systems and communicating these changes to members after two years of delays are significant. Understand the sensitivity of the issue, however, support a postponement.

Response: Noted. National Treasury is acutely aware of the increased costs and further confusion that may arise due to postponement resulting from the proposed amendments. However, greater certainty is more likely with greater consensus, as public differences between key stakeholders can cause greater confusion amongst members of retirement funds. The RLAB attempts to provide a degree of certainty by amending the legislation as soon as possible to delay certain provisions for a period of two years, and thereby allowing further engagements with stakeholders.

Comment: The proposal to delay the compulsory annuitisation provision is not sufficient. Instead, the entire provisions relating to annuitisation should be repealed completely. A postponement does not ensure that meaningful engagements will take place within NEDLAC and will not address the underlying opposition to annuitisation provisions. In effect these laws attack union established and run provident funds as they will no longer exist in the same format.

Response: Noted. The postponement of the requirement to annuitise is not intended to only delay the introduction of the amendments without further discussions. A repeal of the provisions dealing with annuitisation will also mean repealing (i.e. taking away) the tax benefit extended to provident fund members, as the two go together. These have further repercussions as it would potentially mean a significant reversal of already upgraded payroll systems since provident funds would have to be carved out completely. As stated in the media release on 27 October 2016, "Government's view is that these reforms are meant to transform provident funds to server their members better".

National Treasury is committed to meaningful engagement to ensure that these reforms benefit workers and their families. Specifically, National Treasury is keen to discuss particular aspects behind any potentially negative impacts that may arise from the requirement to purchase an annuity (e.g. poor value annuities, bequests to family, losing access to the old age grant, etc.). Possible additional reforms to the old-age grant and the annuities market, to create a retirement regime that benefits all retirement fund members, would be areas where co-operation and further dialogue would be welcomed.

Comment: There was a lack of consultation relating to the provisions on compulsory annuitisation, including through NEDLAC, and these provisions should consequently be repealed.

Response: Not supported. The retirement reform proposals were discussed in NEDLAC and in public hearings through the SCoF in 2013, 2014 and 2015. The report from the SCoF dated 25 November 2015 confirms this point by stating "in the case of the retirement reform amendments, these consultations, according to National Treasury,

have been taking place since 2012, including through NEDLAC, even though finally there was no agreement in NEDLAC on the tax harmonisation and annuitisation amendments. SCoF is unable to tell the quality and depth of these negotiations, but that there have been negotiations is clear to the Committee”. National Treasury does not believe there is a constitutional basis for scrapping the Taxation Laws Amendment Act, 2015 due to a lack of consultation. In any case, the annuitiation and tax harmonisation clauses are included in the Taxation Laws Amendment Act, 2013.

Comment: The Taxation Laws Amendment Act, 2015 amended the definition of retirement annuity fund with the intention of aligning the treatment of lump sum withdrawals from a retirement annuity fund between local residents and expatriates. This was to allow expatriates to take their accumulated savings as a lump sum when they moved back to their home countries. The legislation appears to have an unintended consequence of allowing local residents to take the full lump sum without being required to formalise their emigration through the South African Reserve Bank. Request that this unintentional anomaly is corrected in the RLAB.

Response: Noted. The implications of the amendment on the ability of local residents to access their retirement annuities through a lump sum withdrawal on becoming non-tax resident (but without formally emigrating) will be discussed and assessed with SARS and other stakeholders. Potential amendments, if necessary, can be included in the draft Taxation Laws Amendment Bill to be published later in the year.

3. Annexures

3.1. Annexure A

List of respondents to hearings on Revenue Laws Amendment Bill:
Andrew Crawford
Association for Savings and Investment South Africa
Bowman Gillfillan
Business Unity South Africa
Cashkows
Congress of South African Trade Unions
National Union of Metalworkers of South Africa