

**Mr Nkululeko Mangweni**  
**South African Parliament**  
**Select Committee on Finance**  
Per e-mail: [nmangweni@parliament.gov.za](mailto:nmangweni@parliament.gov.za)

28 November 2023

Dear Mr Mangweni

**INSTITUTE OF RETIREMENT FUNDS AFRICA: COMMENTS ON TAXATION LAWS AMENDMENT BILL 36-2023**

We are writing to submit our comments and observations on the Taxation Laws Amendment Bill No. 36 of 2023 ("Bill"), which is currently under consideration by the National Assembly. Our comments are limited to matters related to retirement funds.

Please note our detailed notes for the two sections listed below:

1. TRANSFER OF RETIREMENT INTEREST FROM A PROVIDENT FUND TO A PENSION FUND
2. TRANSFER FROM ONE RETIREMENT ANNUITY FUND TO ANOTHER ON OR AFTER NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE

Please let us know should you require further information or clarification.

Your sincerely



**Wayne Hiller van Rensburg**  
Executive Officer  
Institute of Retirement Funds Africa

## COMMENTS ON TAXATION LAWS AMENDMENT BILL 36-2023

### 1. TRANSFER OF RETIREMENT INTEREST FROM A PROVIDENT FUND TO A PENSION FUND (Paragraph (ii)(dd) of the proviso to the definition of “provident fund”, “provident preservation fund” and “retirement annuity fund” in section 1 of the Income Tax Act)

(i) The legal nature of the problem

A member is not allowed to transfer a benefit from a provident to a pension fund under the definition of “provident fund”.

(ii) A detailed factual description

The definition of “provident fund” currently only allows for a transfer of a retirement interest to a pension preservation fund, provident preservation fund or retirement annuity fund; it does not include a transfer to a pension fund. This is probably an oversight, since a transfer from a provident to a pension fund was allowed even before annuitization became effective on all funds from 1 March 2021. The definition should accordingly be expanded to also include a transfer of a retirement interest to a pension fund.

On p40 of the 25 October 2023 draft response document on the Tax Bills it is stated that the additional amendments to paragraph (ii)(dd) of the provisos to the pension and provident fund definitions was accepted. However, whereas the proposed amendment to paragraph (ii)(dd) of the proviso to the definition of “pension fund” was included in the TLAB, the proposed amendment to the definition of “provident fund” was not included.

(iii) Proposal

It is suggested that paragraph (ii)(dd) of the proviso to the definition of “provident fund” be amended as follows:

*“...where the employee elects to transfer the retirement interest to a pension fund, provident fund, pension preservation fund, provident preservation fund or a retirement annuity fund ...”*

(iv) The nature of the business / persons impacted

Transfer of retirement interest from a provident fund to a pension fund.

### 2. TRANSFER FROM ONE RETIREMENT ANNUITY FUND TO ANOTHER ON OR AFTER NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE (Paragraph 6A of the Second Schedule to the Income Tax Act)

(i) The legal nature of the problem

Members of a pension fund, provident fund, pension preservation fund and provident preservation fund are allowed to transfer their benefits on or after normal retirement age but before retirement date to another fund, but members of a retirement annuity fund do not have the same right.

There is no rationale for this disparity. This is confirmed on p48 of the draft response document on the Tax Bills, dated 25 October 2023, where it is stated as follows:

The argument that there should be parity between the treatment on various funds is noted. Given the fact that the announcement made in the 2023 Budget Review only catered for occupational funds, retirement annuity funds have not been included in this legislative cycle. Commentators are welcome to include submissions for the inclusion of retirement annuity funds as part of future legislative cycles.

(ii) A detailed factual description

Paragraph 2(1)(b)(iB) of the Second Schedule provides that when a member transfers from one retirement fund to another before retirement date, a transfer benefit accrues to that member. Paragraph 6 of the Second Schedule in turn then allows for a deduction of the total amount transferred. The result is that the transfer itself is then tax free. The member is entitled to take a withdrawal benefit from the receiving fund, except if the receiving fund was a retirement annuity fund.

Paragraph 6A of the Second Schedule has been amended with effect from 1 March 2022 to allow for a tax-free transfer of a benefit on or after normal retirement age but before retirement date from one preservation fund to another, but not from one retirement annuity fund to another. This might have been an oversight, which we propose should be corrected.

(iii) Proposal

- (a) Substitute subparagraphs (c) and (d) in paragraph 6A of the Second Schedule to the Income Tax Act with the following subparagraphs:

*“(b) pension preservation fund or provident preservation fund into another pension preservation fund or provident preservation fund or a retirement annuity fund;  
[or]*

*(c) pension or provident fund into another pension or provident fund that is subject to an involuntary transfer [.] or”.*

- (b) Add the following subparagraph after subparagraph (d) in paragraph 6A of the Second Schedule to the Income Tax Act:

*“(e) retirement annuity fund into another retirement annuity fund.”*

(iv) The nature of the business / persons impacted

Members of retirement annuity funds that cannot transfer their benefits after normal retirement age but before retirement date to another retirement annuity fund.