|  |
| --- |
| **Submission by COSATU on**  **the Revenue Laws**  **Amendment Bill, 2016** |
|  |
| |  | | --- | | Cosatu logo |   **Submitted to:**  **Joint Standing and Select Committees on Finance**  **Parliament**  **Republic of South Africa** |

# Introduction

The Congress of South African Trade Unions (COSATU) notes government’s tabling of the Revenue Laws Amendment Bill.

COSATU appreciates the Presidency’s efforts to engage COSATU’s vehement opposition to the Taxations Laws Amendment Act’s compulsory annuitisation provisions.

However these engagements have not addressed COSATU’s fundamental concerns. The Bill is only providing for the postponement on compulsory annuitisation. COSATU’s position was and remains that compulsory annuitisation must be removed from the Act and the Amendment Bill. COSATU remains deeply opposed to compulsory annuitisation remaining in the Revenue Laws Amendment Bill.

COSATU cannot accept a simple postponement with the promise of further engagements. Postponement is not sufficient and that it in fact must be removed altogether.

It is not sufficient for Treasury to say they went to Nedlac when no meaningful engagements or negotiations took place at Nedlac. This is why Nedlac could not produce a report on such engagements as required by the Nedlac Act. We look upon Parliament and Government to be champions of social dialogue and engagement at Nedlac. A postponement will not address this undermining of Nedlac.

A postponement will simply defer a fait accompli decision to force annuitisation upon workers. The only beneficiary of this will be investment companies which will now see billions of workers’ hard earned deferred wages forced to annuitise. A postponement will in effect simply defer and cement an already taken decision to require workers to annuitise.

We have been down this road before. Parliament in 2014 delayed annuitisation by 1 year. Treasury then did not engage meaningfully at Nedlac on comprehensive social security at Nedlac. It simply chose to let time pass and then to proceed with its original plan of compulsory annuitisation. COSATU will not agree to repeat this.

Treasury’s failure to meaningfully engage upon retirement reforms in conjunction with the long promised Discussion Paper on Comprehensive Social Security at Nedlac cannot be condoned. This is despite repeated promises by government since 2002 to release this paper for engagement.

COSATU notes government’s renewed promise to engage and to table the long awaited Discussion Paper on Comprehensive Social Security.

Retirement funds, including provident funds, fall within the legal jurisdiction of the Department of Social Development. They must in fact drive this process and not Treasury which has a fundamentally different management of balancing budgets, reducing social grant expenditure, increasing investment funds available for the stock market etc. Workers have fought for the right to provident funds to protect themselves and not to grow the JSE.

However COSATU has previously received commitments from government in this regard only for them not to materialise later. Thus COSATU remains adamant that compulsory annuitisation must be removed from the Bill and thus calls upon Parliament to amend the Bill accordingly.

2. Taxation Laws Amendment Act No. 39 of 2013 (“2013 TLAA”)

On 24 December 2014, President signed the 2013 TLAA into law. The 2013 TLAA was supposed to take effect on 1 March 2015, but was postponed to due to COSATU’s interventions with National Treasury to enable further engagements between in NEDLAC on the impact of the law on provident funds particularly on annuitisation.

This tax and retirement reform law, which will come into effect on 1 March 2016, is meant according to National Treasury to encourage retirement savings, protect retirees from old age poverty, and promote fairness and simplicity in the current system. It provides for higher tax deduction limits for retirement contributions, which means better retirement benefits and higher take home salaries for many employees.

Lastly, the law aligns the tax treatment of retirement contributions and benefits across all retirement funds, hamornization. Specifically, the law requires provident fund members to use a portion of their retirement benefit to purchase an annuity if the total accumulated savings at retirement are R150 000 (i.e. *de minimis* threshold).

**3. Taxation Laws Amendment Bill, 2015 (“2015 TLAB”)**

We note the changes that Treasury made with regards to the requirements for provident fund members to use a portion of their retirement benefits to purchase an income at retirement, i.e. to annuitise. To deal with this challenge, the existing legislated *de minimis* threshold of R150 000, contained in the 2013 TLAA, was increased to R247 500 in the current 2015 TLAB.

This amendment was meant to sweeten our concerns around annuitisation i.e. that at retirement, members will be required to take one third of their total benefit in a lump-sum and buy a monthly annuity (pension) with the difference (two third). This means that provident fund members with total benefit of R 247 000 will be able to take their entire retirement benefit as a cash lump sum in retirement at this threshold.

**4. Details on the 2013 TLAA**

The 2013 TLAA contains certain provisions on tax and retirement reforms which harmonises the tax treatment of retirement contributions and related retirement benefits. In particular, the 2013 TLAA does the following which in the main we support except the main elephant in the room: Annuitisation.

* Introduces higher tax deductibility limits of 27.5% and R350 000 for contributions into retirement funds
* Removes the concept of pensionable salary as a base for calculating the abovementioned contribution rates
* Treats employer contributions into retirement funds as a taxable fringe benefit
* Increases the *de minimis* threshold from R75 000 to R247 000[[1]](#footnote-1)
* Provides provident funds members with a tax deduction, for the first time, for their contributions with a better take home income
* Requires provident fund members to purchase an annuity if their total accumulated savings at retirement are more than R247 000 which is preservation through back window
* Protects vested rights by exempting all accumulated savings in provident funds, up to 29 February 2016, from the requirement to annuitise.
* Exempts those who are 55 years old on 1 March 2016 from annuitising, while those below 55 years of age will have to annuitise only new contributions post 1 March 2016, and if those new contributions total R247 000

**5. What is our major concerns on this TLA Act?**

As we all know, from 1 March 2016, new contributions to any retirement fund will be subject to the same tax dispensation, and these contributions, and growth on them, will be subject to the same annuitisation requirements when members retire *(that is, that no more than one-third may be taken in cash and the rest must be taken in the form of a monthly pension).* Members of provident funds will become pension fund members while they continue carrying the risk. And the law doesn’t address this challenge.

While vested rights have been protected, *(all contributions up to the 29 February 2016*) so members who have contributed to provident funds before 1 March 2016 will still be able to receive their benefits in respect of those contributions in the form of lump sums at retirement. Provident fund members over 55 on that date will be able to receive lump sum benefits in respect of contributions made to those funds after 1 March 2015.

These changes means that there is not going to be same provident funds come 1 March 2016 and beyond. This to us it a major setback because it attacks union established and runned provident funds.

**6. The positive changes that were be implemented were welcomed and these included the following :**

* The Pension Funds Act should **strengthen the governance** of retirement funds by allowing the Registrar to impose fit and proper requirements on fund trustees. This must be accompanied by some strong action against service providers who charge exorbitant fees to workers savings.
* More importantly, a study on the cost of running retirement funds was conducted and its outcomes were damning on the service providers. National Treasury did nothing about that study maybe because it was affecting service providers which are their actual alliance partners.
* A requirement for trustees to be trained was welcomed, however, this must be accompanied by a regulated full paid time off for trustees, and a clear program of Training to be provided by each fund through independent provider regulated and supervised by the Regulator of Pension Funds. We should also deal with the RPL to address the legacy of the past. Some trustees have the knowledge, experience and capability but are not recognized as competent due to lack of certificate to proof their competence. This should be taken into account. Most importantly, this should not be used as barrier for black African workers to be trustees or as an attempt to circumvent the Act on democratization of boards of trustees.
* To clarify the **fiduciary duty owed by trustees** of a fund to its members and to the fund itself, as well as other technical changes - this is even more important as there are grey areas or lack of understanding on the fiduciary responsibility of trustees.
* The criminalisation of **non-payment of contributions to pension funds** by employers, delinquent employers have been made personally liable for their non-payment of contributions and whistle-blowers are better protected. This to us was one of the fundament issues which was suppose to have been addressed and implemented,

**7. Conclusion**

COSATU appreciates the Presidency and government’s efforts to address workers and COSATU’s strong opposition to compulsory annuitisation.

However these have not gone far enough. They have not addressed workers’ fundamental objection to compulsory annuitisation.

Provident funds are workers’ private money. They are a deferred wage that belongs to workers. Workers cannot be told by government how to spend their money.

Provident funds are workers hard won right. They cannot be taken away by officials far removed from workers’ daily struggles to survive. Provident funds are workers’ last line of defence in the face of financial threats to their very survival.

A postponement is not sufficient. Compulsory annuitisation must be removed from the Bill. This will then provide a sounder basis for genuine engagements between government and labour at Nedlac on comprehensive social security.

Appendix 1

COSATU FACT SHEET ON THE TAXATION LAWS AMENDMENT ACT

**Background**

Retirement insurance began in 1928 in South Africa after the Pension Funds Act of 1928 was passed. Like all other social policies, it was originally primarily intended to cover whites, the poor-whites in particular, and to some extent the coloured people. Interestingly, this was a non-contributory pension scheme, whereby only the employers made contributions. In the aftermath of the World War II, in response to the resultant widespread poverty and income insecurity, the British government published the Beveridge Report, whose recommendations called for a comprehensive social security system – for instance, recommendation of this report led to the creation of its famous National Health System. This report became considerably influential across the world at the time when many countries were generally committed to addressing poverty – in the context of the end of colonization, independence and socialist struggles inspired by the Soviet Union.

Even though some governments had already begun introducing social security schemes, from then onwards a lot more followed - introducing a range of social insurance plans, including public pension schemes. Social democratic states such as Sweden, Norway, Finland, Denmark and Iceland emerged – pursuing more public and expansive nets of social provision.

These countries set the benchmark in guaranteeing everyone’s right to a pension (and other social provisions as citizenship rights), including the life-time impoverished senior citizens with no record of contributions before their pension days. Together with other social insurances, these measures rolled-back the market and ensured social reproduction was largely kept as the responsibility of the state and capital, rather than shunted to the workers either as individuals or as part of an exploited class. More importantly, these countries introduced their extensive social security provisions at the time when they were relatively poor (in the aftermath of the World War II). Thus, these extensive social measures became directly instrumental in the development of the economies of these countries.

In the South African public debate about social security reforms, including in relation to the Basic Income Grant (BIG) and NHI, Neoliberals have virtually succeeded in creating a conventional wisdom in society that these extensive social security provisions are only possible in rich countries or that the country must first develop economically before it can embark on such policy interventions.

In contrast to most of these countries that substantially extended social security after the World War II, South Africa stuck to its largely privatized retirement insurance system covering white workers in the private sector, alongside the huge public sector pension funds including those established by parastatals. With the Apartheid job-reservation policies in place and since social insurance provisions were linked to employment, the design of the retirement insurance schemes was typically reflective of racial discrimination - benefiting white people in the main.

Thus, the low-skill, migrant and weekly paid workers who were all African were excluded in term of the 1956 Pensions Act. However, by the 1970s, the rising black trade unions began to expand work-place demands with the broader socio-economic rights and the political struggle. In part, this influenced the Riekert Commission to propose a range of reforms pertaining to existing racial discrimination in the labour-market, with a view to maintain social exclusion of the black people mainly through the market-forces. Thus, in the wake of these cosmetic reforms in the labour-market, including the uplifting of the banning order on black trade unionism, over time the black workers scored some gains in their work-places and in the Apartheid labour-market in general, including securing agreements that covered retirement insurance.

Hence, this struggle saw many COSATU affiliates achieving provident funds in the 1980s and 1990s. Despite the historical importance of this struggle and its gains, and the fact that an overwhelming majority of the workforce prefer provident funds because they allow for lump sum payment upon retrenchment, change of employment or retirement, provident funds remain inferior from a social security point of view because of their define contribution benefit structure. Another shortcoming is the fact that in the long-term the cash runs out, leaving the worker to lead the rest of their life in poverty.

However, the question of the preservation of funds, important as it is in terms of the long-term transformation of the retirement system, is not a straight-forward question given the high-level of unemployment and lack of any social protection for the unemployed in South Africa.

Today the South African retirement insurance system is mainly characterized by private occupational and individual insurance schemes, in which the for-profit private asset management companies are responsible for administration and investment of the workers’ retirement savings, including some of the assets of the public funds. Thus, in the past 25 years there have been a shift towards the define contribution model in the wake of the rise of Neoliberalism.

**THE RETIREMENT INSURANCE LANDSCAPE IN SOUTH AFRICA**

Outside the public sector funds, the South African retirement insurance system evolved largely from a fully privatized arrangement based on occupational and individual forms of cover. Thus, in contrast to most countries, the South African insurance system has been remarkably peculiar in the absence of a mandatory form of insurance, publicly administered earnings-related retirement system across the economy. Hence, the system is currently fragmented and goes against the social security principles of solidarity. Instead, in the private sector it is the middle and high income earners, who are properly insured and who largely enjoy public subsidies in the form of tax rebates which are meant to be incentives to encourage retirement savings. Government subsidizes private retirement provisions through Tax Expenditure Subsidies (TES’s) which was worth about R17 billion in 2009.

Currently in South Africa there are more than 2 700 retirement funds. Excluding the double-counting caused by those participating in more than one fund, the actual numbers of active members or contributors is estimated to be 6 million. And excluding agricultural and other unspecified workers in terms of the Labour Force Survey, the total potential contributors are 12 million whilst the total number of workers without any retirement insurance is about half of the workforce.

Like in the private health industry in South Africa, the extortionately high costs of administration impact significantly on the benefits delivered, in this case on the final value of retirement payouts which tend to be grossly small compared to the last wage received before retirement. It is estimated that the administration costs ratios for most policies range between 26.7% and 43.2% - meaning for every rand in the contribution. Whilst government blames this on poor levels of transparency and lack of price competition, in reality this is consistent with experiences where there has been privatisation of social security services as we know even with the private medical industry. In South Africa, this is compounded by poor regulatory laws and the lack of capacity to monitor and enforce the law; hence virtually all pension fund members pay administration charges that are exceedingly higher even relative to the international norm and administration costs are even higher in smaller funds.

Retirement insurance is usually combined with other ancillary benefits, such as the post-retirement medical insurance, death and disability benefits. As many employers moved from the define benefit to define contribution model over the past two decades or so, they have also been removing the post-retirement medical provision. Current arrangements to pre-fund post-retirement medical scheme obligations are fragmented, lack transparency, and are generally not transferred when employees change employment.

The Congress of South African Trade Unions has always been at the forefront of finding solutions to the issue of ensuring that workers do not struggle to make ends meet after retirement.

As far back as fifteen {15} years ago, we made submissions to the *Committee of Inquiry into a Comprehensive System of* *Social Security for South Africa*, chaired by Professor Vivienne Taylor. The Committee was mandated to conduct research and to advise government on a social security policy reform process. This involved, among other things, examining the poverty problem in South Africa; looking at the current social security system, including existing social grants; and making recommendations for reform. In May 2002 the Committee released its consolidated report (Taylor Report), in which the critical role of the right of access to social security and assistance for reducing poverty was highlighted.

The final report was submitted to the Minister of Social Development and amongst other many challenges, the commission identified the following:

1. Minimimum Contribution
2. Low cost national Savings scheme (National Social Security)
3. Investment (Local & International
4. Passive Investments
5. Fragmentation of funds
6. Administration
7. Tax on Retirement Funds
8. Exclusion (Lack of Compulsion for retirement funds)
9. Basic Income Grant

The Department of Social Development as the leading and the custodian of social security matters subsequently released a number of papers that were never tabled at NEDLAC for comments because this matter affects a number of departments across government.

What came out sharply from the Taylor report *(which National Treasury never liked)* was that it would be wrong and imprudent to address social security reform on piece meal basis. This proposal gave birth to logical conclusion that South Africa needed a Comprehensive Social Security System that was going to address the problem of fragmentation and double dipping by some leaving nothing for others in the system.

Hence the decision was taken by social partners between 2006-2009 at NEDLAC that government be given some time to develop an Inter –Departmental Paper and present it at NEDLAC for discussion by all social partners. While this was happening COSATU continued to work together with the department of Social Development on number issues including recommendations for consideration by social partners in trying to address the challenges experienced by our members after they retire.

The government Inter-Departmental Task Team (IDTT) was established in the main by the following government departments, National Treasury, Social Development, Transport, Labour and Department of Health, led by Social Development.

Government disagreements played themselves out in the IDTT and National Treasury continuously killed any paper that was not their product. In 2011, a paper on comprehensive social security and retirement reform was stalled within government by Inter-Ministerial task team simply because National Treasury was not happy about the outcome of that process.

**Politically**, the 2009 Alliance Summit discussed issues arising from its Social Transformation Committee and came with clear recommendations and there was convergence on the issue of developing a comprehensive social security and retirement reform proposals for discussions at NEDLAC.

Since then the ANC has been fully behind the release of the Comprehensive Social Security and Retirement reform paper and 2015 ANC NGC instructed the government to table Comprehensive Social Security and Retirement reform paper in NEDLAC before the end of 2015. This was ignored by government.

### Taxation Laws Amendment Act 2013, passed by Parliament in December

Later in 2011 the National Treasury publicly released the Taxation Law Amendment Bill (TLAB) for discussions. They also engaged COSATU and other federations outside of NEDLAC processes after releasing those draft bills on Taxation Laws Amendment Bill) (TLAB). Amongst a number of issues they wanted to discuss or raise in the draft bill were the following.

* The cost of running retirement’s retirement funds.
* Nonpayment of contributions by delinquent employers. They wanted that criminalized.
* They wanted to clarify fiduciary duties of trustees and be able to remove unfit and improper trustees

We supported all of the above issues. It was during these engagements with National Treasury that we discovered that they had introduced the issue of preservation through the back door in their draft bill. It became obvious to us that the intention of National Treasury was to use the TLAB tax harmonization paper to hide their intention to sneak the preservation of retirement funds.

We made it very clear to government officials that there is a deep seated anger from trade unions particularly COSATU affiliates, about the changes to the Provident Funds. We reminded them that workers have a history of fighting for the creation of these pension funds under the apartheid government, when the government did not cater for majority of black workers at the time. We rejected the preservation aspect of the draft bill and made it clear to them that it cannot happen without workers consultations and consent. We further reminded them the that the piece meal and fragmented approach could only be resolved if they table the Inter-Department paper of Comprehensive Social Security and Retirement reform at NEDLAC for engagement paper but also and he

**On the issue of Preservation:**

The federation continued to consistently remind National Treasury officials including their foreign consultant from London, that preservation cannot and will not be implemented outside the Comprehensive Social Security & Retirement reform ,as agreed few years ago in NEDLAC. We explained that no policy change can be sustainable in the current environment of high and stubborn unemployment and poverty in our society without a clear social security system in place.

We also told them that we need to discuss the issue of coverage of vulnerable workers. Most workers in these affected sectors are vulnerable in terms of low wages, job security, and retirement funds. We told them that the priority was the issue of vulnerable workers and the high costs of running retirement funds as opposed to preservation.

The discussions deadlocked between us and Treasury because we were adamant that there will be no preservation without the paper and outside NEDLAC. Treasury abandoned the our discussions and went to parliament to lobby for the enactment of this bill into law , totally abandoning the consultation process with workers.

We demanded that they table the act before NEDLAC for discussions in January 2014 and they tabled it the following month in February with all the complications and difficulties that it was already a law. We rejected it there and threw it out of NEDLAC and explained that it was not going to replace the Comprehensive Social Security paper that we were promised.

After this issue was leaked to the public, there was widespread panic with workers resigning enmasse and the federation had to do a lot of clean up. We dealt with the Treasury manufactured crisis by telling workers not to resign and that government was not going to nationalize their funds.

We also called on service providers to stop exacerbating an already worse situation by preying on and misleading workers further.

We convened a meeting with Treasury Minister Nene under the auspices of NEDLAC and raise the concerns around their unilateral recklessness in dealing with issues affecting workers retirements savings.

We agreed in a subsequent bilateral meeting to postpone the implementation date of these taxation laws by two financial years. However because this was supposed to be ratified by the standing committee on finance, they reduced the postponement period to only one financial year.

We had agreed to postpone it by two years so that government could release the Comprehensive Social Security pare and engage on these issued that had resulted I a deadlock of negations.

But government did not release the paper even though Minister Nene had promised that we were going to get it before the end of 2014.

On July 2015, they told us in bilateral with COSATU that they were moving ahead with implementation in less that eight months from then. We reminded them that they had promised to release the paper before the end of 2014 and we insisted that they put everything on hold until everything was finalized.

In September 2015, as NEDLAC Task Team was convened with all social partners made it clear to government that there will be no movement on this issue unless the paper is tabled. They left the meeting with a clear understanding of what was needed from them for negotiations to proceed.

Yet the week after the Minister was in parliament tabling the amendments to the law therefore giving a clear sign that they had decided to abandon NEDLAC and go it alone.

A meeting was convened by the Chairperson of the Standing Committee on Finance who delegated the Chairperson of the ADHOC Committee to meet with the federation and the Minister of Finance as another attempt to resolve this matter. The meeting failed to deliver a solution. The leadership of COSATU met with the president to brief him about this legislation and about all the concerns we have and ask him not to sign it

Unfortunately, we learned in January that the bill was signed on the 24th of December 2015 a day before Christmas, when workers and the country were on holiday.

**COSATU OBJECTIONS TO THE LAW**

* The law introduces the concept of preservation through the back door without an agreement at NEDLAC.From 1 March 2016, new contributions to any retirement fund will be subject to the same tax dispensation, and these contributions, and growth on them, will be subject to the same annuitisation requirements when members retire (that is, that no more than one-third may be taken in cash and the rest must be taken in the form of a pension).
* The law as it stands will destroy all provident finds as we know them and will create only massive profits for the private sector as workers will be expected to buy annuities.
* It criminalizes the right to choose and it signals the emergence of an overbearing state that wants to have a say in how and when workers can spend their money.
* The poor will end up subsidizing the rich because poor workers with no medical aids and working in vulnerable and exposed workplace environments have a high mortality rate.
* The systems of employers and service providers are not ready for this law.
* We are still unhappy with the piece meal approach in the absence of a holistic framework as a reference point as agreed many years ago in NEDLAC
* Some elements of Social Security are implemented in different government Departments where double if not triple dipping takes place while other citizen have benefit.
* The failure by government to release IDTT paper on Comprehensive Social Security over many years of waiting it is a sign of a Treasury that is running amok and running the country with no mandate from workers.
* It is now used as a cash cow by the unscrupulous service providers, who were advising workers to cash in their money and promise to invest it and or create annuities for them, failing to advise them about the tax implication and their brokerage huge fees

**COSATU demands:**

Our position has not changed.

* We reject the piecemeal approach to retirement reforms.
* We demand a total scrapping of this legislation to allow genuine engagements as agreed in the passed until there is agreement by NEDLAC constituencies and called on government to release the Comprehensive Social Security & Retirement reform paper without any further delay to be tabled for engagements NEDLAC.
* Retirement Funds are a differed wage of workers. Neither government nor employers have any business of interfering.
* We reject the notion that workers, black workers in particular can’t manage their financial affairs. This is not only an insult to workers but smacks of racism. We established provident funds precisely to cater for our retirement.
* South African policy development is not for sale. We have serious issues with the foreign or semi-foreign consultants ,who have no clue of our labour market and political dynamics but leading government discussions on this very important matter.

We are ready to sit down discuss the road-show programme as discussed with Minister in NEDLAC re-commit ourselves to speedily address the challenges the industry is facing but only if this piece of legislation is scrapped.

1. *De minimis* is the amount below which a member of a retirement fund is not required to annuitise, or buy an income with a portion of the retirement benefit when they reach retirement. [↑](#footnote-ref-1)