

ASISA COMMENT ON 2022 DRAFT REVENUE LAWS AMENDMENT BILL: TWO-POT SYSTEM

29 August 2022 – Annexure to letter of same date



Submitted on behalf of ASISA by Rosemary Lightbody

	Clause number in the draft Bill	Proposed amendment (wording of the clause in draft Bill)	Potential problem(s)	Suggested solution(s)
1	1(1)(a) 1(1)(o) 1(1)(gg)	Introduction of new definitions “Savings pot”, “Retirement pot” and “vested pot”	<p>These new definitions are not positioned in the correct alphabetical order, based on the proposed positioning.</p> <p>The Bill provides that the Commissioner “may” approve pots. Should this not be consistent with other definitions which provide that the Commissioner “shall not” approve funds unless certain conditions are met? Or is there a particular reason for this difference?</p>	<p>We recommend that this be aligned to alphabetical ordering.</p> <p>Clarification required.</p>
2			<p>The naming of the “pots” is important and any naming convention should confirm that the total contributions are still to be viewed in totality as the member share of fund. It is our view that reference to “pots” implies that the monies standing to the credit of the different “pots” are kept and dealt with separately.</p>	<p>We suggest that the term “portion” be utilized in substitution for the word “pots”, so that reference is made to “savings portion”, “retirement portion” and “vested portion”</p>
Definition - “savings pot”				
3	1(1)(a)	““Savings pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement	<p>The wording implies that all transfers into preservation funds after 1 March 23 can go into the Savings pot, which is not the intention.</p>	<p>“Savings pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person</p>



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		<p>annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that: (a) not more than one-third of the total retirement contributions by that member and <u>transfers to a pension preservation fund or provident preservation fund</u> on or after 1 March 2023 is allocated to that pot Provided that in determining the value of the contributions an amount calculated as follows must not be taken into account—.....</p> <p>(i) any amount contributed or transferred to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund relating to the period prior to 1 March 2023; and</p>	<p>The preamble to par (a) appears only to apply to transfers to preservation funds. There appears to be no reason why it should not apply equally to other retirement types. In fact, sub-par (i) includes all fund types and seems to render the earlier reference superfluous. The transfer cannot relate to the period prior to 1 March 2023, because it is specifically excluded in paragraph (a)(i).</p>	<p>who is a member of that fund, provided that the rules of the fund provide that: (a) (i) not more than one-third of the total retirement contributions by that member and (ii)<u>transfers of balances from other savings pots to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,</u> on or after 1 March 2023, are allocated to that pot: Provided that in determining the value of the contributions an amount calculated as follows must not be taken into account—.....</p> <p>(i) any amount contributed or transferred to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund relating to the period prior to 1 March 2023; and</p> <p><i>Alternatively,</i> delete the relevant wording in the preamble to (a) and retain (a)(i).</p>
4	1(1)(a)		<p>It is not clear why retirement annuity funds and other retirement funds are not included in the definition.</p>	<p>All fund types to be referenced in the definition, not only preservation funds</p>



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5	Para (a)(i) and (ii)	<p>Provided that in determining the value of the contributions an amount calculated as follows must not be taken into account—</p> <p>(i) any amount contributed or transferred to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund relating to the period prior to 1 March 2023; and</p> <p>(ii) charges and risk premiums;</p>	<p>Why value of <i>contributions</i>, should it not be value of <i>savings pot</i>?</p> <p>It is not clear why it is necessary to state that the value of contributions before 1 March 2023 must not be taken into account. It has already said “that it comprises contributions after 1 March 2023”.</p> <p>As no specific reference has been made to provident fund members who were 55 on 1 March 2021, it is assumed that these members can contribute up to one third of their contributions to the 'savings pot'.</p>	<p>Reword preamble: “Provided that in determining the value of the contributions savings pot an amount calculated as follows must not be taken into account—</p> <p>Delete para (a)(i)</p>
6	1(1)(a)(i);		<p>It is not clear what is meant by “any amount ... transferred to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund relating to the period prior to 1 March 2023”. Does this relate to transfers prior to 1 March 2023, or to transfers comprised of contributions payable before 1 March 2023, regardless of whether or not the transfer takes place before or after 1 March 2023?</p>	<p>In the case of contributions, clarify whether it is the date of payment of contributions or the date that contributions become payable.</p> <p>In the case of transfers, clarify the date of transfer.</p> <p>For non-voluntary transfers it is assumed that the date is the effective date of the Section 14 transfer and for voluntary transfers it is the date of election by the member.</p> <p>Consider replacing “<i>the period prior to 1 March 2023</i>” with “the Vested pot”.</p>



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7		<p>(b) contributions during a year of assessment that exceed one-third of the deductible amount for that person contemplated in section 11F(2) are not allowed to that pot;</p>	<p>This sub section is strongly opposed by ASISA members.</p> <p>In the normal course, excess amounts would roll over and be deductible in the following tax year or if not utilized, taken as tax-free at retirement. The proposal to oblige all “excess” contributions to be credited to the retirement pot will not be possible to administer.</p> <p>In order to determine whether a fund member's contributions exceed the deductible limit of 27.5% of taxable income or remuneration, retirement fund administrators will need to know what the member's taxable income or remuneration is. While occupational funds may be aware of a member's fund/pensionable salary, they will need to ascertain the member's 'remuneration' from each employer on a monthly basis, which is unfeasible. Ascertaining a member's “taxable income”, on the other hand, requires a determination of that member's taxable capital gains, rental and investment income as well as any applicable exemptions and deductions. This will not be known to administrators of any retirement funds. It will only be known to the members themselves and to SARS. Even then, it will only be known after the end of the tax year. To expect administrators to then go back and retrospectively re-allocate contributions</p>	<p>ASISA members submit that sub-section (b) of the definition of “savings pot” should be deleted.</p>
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			<p>across the savings and retirement pots is not reasonable or practicable.</p> <p><u>Interpretation of paragraph (b) of the definition of "Savings pot"</u></p> <ul style="list-style-type: none"> • Where a member makes contributions to any retirement fund on or after 1 March 2023 and those contributions exceed the allowable deduction in terms of section 11F(2) of the Income Tax Act (currently the higher of 27.5% of taxable income or remuneration, capped at R350 000), any such contributions exceeding the deductible limits may not form part of the contributions to the Savings pot but must rather be allocated to the Retirement pot of that member. • Retirement funds and/or their section 13B administrators are responsible for allocating member's contributions to their respective investment accounts. It is assumed that the fund administrator would be required to allocate the portion of a member's non-deductible contributions made in respect of the "Savings pot, to the "Retirement pot". • To make such an allocation, the fund administrator would need to ascertain: 	
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			<ul style="list-style-type: none"> ○ the value of the member's contributions (on a monthly basis) across all his/her retirement funds; ○ the value of the member's "remuneration" (on a monthly basis) as defined specifically in section 11F(b)(i) as read with the definition of 'remuneration ' in the Fourth Schedule and (on a monthly basis) across all the member's sources) or the member's "taxable income" (as specified in section 11F(2)); and ○ the value of the member's contributions across his/her membership of all retirement funds in order to establish whether the total exceeds the 27.5%/R350 000 cap. <ul style="list-style-type: none"> ● <u>Contributions to occupational Funds (Pension and Provident).</u> <p>While the administrator of an occupational fund will be able to monitor the level of the contributions made by the member/employer to that fund, the administrator will have no knowledge of that member's contributions to any other retirement fund. It is common for a person to be a member of their employer's occupational fund (and make additional voluntary contributions into it) and to also contribute to one or more retirement annuity funds. These different retirement funds are</p>	
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			<p>often administered by different financial services providers.</p> <p>The administrator of the occupational fund will generally be aware of the member's fund/pensionable salary (usually around 73% of actual remuneration) but will not have knowledge of the total value of remuneration paid by the employer to that member. The administrator will also not have any knowledge of that member's taxable income as defined - this is determined on assessment and takes into account all income including investment and rental income, exemptions and deductions.</p> <p>The administrator of the occupational fund will therefore not have any knowledge of that member's contributions exceeding the 27.5%/R350 000 cap.</p> <ul style="list-style-type: none"> • <u>Contributions to Retirement Annuity Funds (RAs)</u> <p>Similarly, a RA administrator will only have knowledge of the RA member's contributions to that RA fund. It will have no knowledge of that member's contributions to any other retirement fund.</p> <p>As with an occupational fund, the RA administrator will not have knowledge of the</p>	
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			<p>member’s remuneration as defined, nor “taxable income” as defined, nor any knowledge of the member’s contributions to all funds in order to establish whether they exceed the 27.5%/R350 000 cap.</p> <p>Even if there was a central data base of every retirement fund member's retirement fund contributions across all retirement funds, accessible on a monthly basis, the costs of the personnel, systems and business processes required to ascertain every member's "remuneration" and "taxable income" would be prohibitive. In any event, the member’s taxable income from “non-salary” sources would still be unknown.</p> <p>Furthermore, the application of the proposed paragraph (b) will act as a disincentive to members contributing over their deductible limits, which is counter to National Treasury's stated intention of stimulating retirement savings.</p> <p><u>It is recommended</u> that paragraph (b) in the definition of "Savings pot" is deleted.</p> <p>If this recommendation is accepted, there will be no loss to the fiscus. The value of a member's non-deductible contributions is currently tax free when the member takes a pre-retirement withdrawal lump sum or when</p>	
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			<p>the member retires and takes a retirement lump sum and/or annuity.</p> <p>If 1/3 of the non-deductible contributions made after implementation date are allocated to the Savings pot and the member accesses that Savings pot before retirement, the full amount of the Savings withdrawal benefit will be subject to taxation at the member's marginal tax rate. The member will not be entitled to a tax-free portion at that point in time. Application of his/her tax-free portion will be deferred until retirement. The fiscus will therefore benefit from the additional cash flow (due to the full taxation of the Savings withdrawal benefit during the member's membership of the fund).</p> <p>In a different scenario, if 1/3 of the non-deductible contributions made after implementation date are allocated to the Savings pot and the member preserves the full Savings pot without accessing any benefit before retirement, the member would be entitled to a tax free amount of 1/3 of the value of those contributions from his/her lump sum benefit. The member would also be entitled to a tax free amount of 2/3 of the value of the non-deductible contributions from his/her annuity. So the member would be in the same tax position as under the current dispensation. The only difference is that only</p>	
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			<p>1/3 of the non-deductible contributions would be allowed as tax-free from the lump sum. Consequently, the fiscus would be no worse off if the member preserves his benefit in the Savings pot until retirement and claims 1/3 of the non-deductible contributions at that point in time.</p> <p><u>It is therefore recommended</u> that SARS should apportion, between the savings pot and retirement pot, non-deductible contributions at retirement or exit from the fund.</p> <p>It is possible for SARS to allocate between the Savings pot and the Retirement pot, the value of a member's non-deductible contributions made after implementation date. On the member's retirement from the fund, SARS can split the balance of the member's non-deductible contributions on a proportionate basis between the Savings Pot and the Retirement Pot.</p> <p>Example 1: At retirement the member's value in the Savings pot is R200 000 and the member's value in the Retirement pot is R1m. The value of the available non-deductible contributions is R300 000. The non-deductible contributions will be apportioned as follows:</p>	
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			<ul style="list-style-type: none"> ○ $R300\ 000/R1.2m \times R200\ 000 = R50\ 000$ tax free applied to the Savings pot (to the lump sum); ○ $R300\ 000/1.2m \times R1m = R250\ 000$ tax free applied to the Retirement pot (to the annuity income). <p>Example 2: At retirement the member's value in the Savings pot is R0 (zero) and the member's value in the Retirement pot is R1m. The value of the available non-deductible contributions is R300 000. The non-deductible contributions will be apportioned as follows:</p> <ul style="list-style-type: none"> ○ $R300\ 000/R1m \times R0 = R0$ tax free applied to the Savings pot (to the lump sum); ○ $R300\ 000/1m \times R1m = R300\ 000$ tax free applied to the Retirement pot (to the annuity income) 	
8	1(1) (b)	b) contributions during a year of assessment that exceed one-third of the deductible amount for that person contemplated in section 11F(2) are not allowed to that pot;	How would deemed contributions in the case of defined benefit funds (such as the GEPF) be treated in this instance as this impacts the underlying defined benefit funding mechanism?	Delete subpar (b)
9	1(1) (a) "Savings Pot" (a)(ii) and 1(1) (o) "Retirement pot" (a)(ii)	(ii) charges and risk premiums;	It is clear that this wording is intended to apply to charges/premiums that are deducted from each contribution received, leaving the net amount actually invested. However, it should <u>not apply to any</u> subsequent administration fees, transactional	Clarify the scope or nature of charges that are to be included in this calculation E.g. charges and risk premiums deductible against such contributions.



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			fees, etc which if not applicable across all pots, should be applied to only the pot where they are incurred.	
10	1(1)(a)	<p>(c) the member may elect to transfer the value of the member’s interest in this pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</p> <p>No definition of the member's interest in the "Savings pot".</p>	<p>Sub-paragraph (c) makes reference to the "member's interest" in that pot. However, the member's interest in the Savings pot is not defined and does not take into account the fund returns plus other amounts credited less deductions/ reductions in terms of section 37D and divorce orders etc.</p>	<p>A member's interest in the Savings pot should be specifically defined in Section 1 of the ITA.</p> <p><u>'Savings pot interest'</u> includes:</p> <p><u>(a) any amount contributed to the Savings pot as prescribed in the definition of 'Savings pot';</u></p> <p><u>(b) with the addition of any other amount credited to the member’s Savings pot on or after 1 March 2023, and</u></p> <p><u>(c) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in item (a) or amounts credited contemplated in subitem (b),</u></p> <p><u>reduced proportionally with respect to a member's interest in the Vested pot and Retirement pot respectively, by an amount permitted in terms of the Pension Funds Act to be deducted from the Savings pot on or after 1 March 2023</u></p>



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11	Para (c)	<p>c) the member may elect to transfer the value of the member’s interest in this pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</p>	<p>The contributions standing to the credit of the different “pots” should still be viewed in totality as the member’s share of the fund. While it may be relevant to confirm that a member may elect to transfer the contributions standing to the credit of the member’s “savings pot” (together with contributions standing to the credit of the “vested pot” and the “retirement pot” – so that in all instances the total member share is transferred), it should not be necessary to state that the member may transfer the contributions standing to the credit of the “savings pot” to the “retirement pot” within the same fund. These “pots” should not be seen to be portions of the member share that are capable of being split away from each other.</p> <p>If the purpose of this proposal is to make provision for amounts contributed over and above the deductible amount contemplated in section 11(F), and if our proposal above regarding the treatment of such “over-contribution” is not supported, we suggest that language is used which doesn’t imply that these notional “pots” are separate pools of money held in the fund. By way of suggestion, it would be preferable to refer to “reallocation” as opposed to “transfer”.</p>	<p>Proposed replacement with the following paragraph:</p> <p><u>“On transfer of a member’s interest in an approved pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund to another approved fund, the value of the member’s share standing to the credit of this pot, will be credited to the “savings pot” in the transferee fund;”</u></p> <p>If the definition of 'savings pot interest' above is accepted, the alternative wording below is suggested:</p> <p><u>“On transfer of a member’s interest in an approved pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund to another approved fund, the value of the member’s savings pot interest, will be credited to the “savings pot” in the transferee fund;”</u></p>
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			<p>It is further our understanding that on retirement there would be no need to transfer any fund credit from the “savings pot” to the “retirement pot” in that a member may elect to receive a “savings withdrawal benefit” (which will be deemed to comprise a retirement fund lump sum as defined) and / or to annuitize the balance (or a portion of) the “savings pot” together with the balance of the “retirement pot”, both forming part of the member’s “retirement interest”.</p>	
12	Para (c)		<p>Sub-paragraph (c) makes provision for the transfer of amounts from a savings pot into a retirement pot within the same fund, presumably at any time. It is felt that it is not necessary to give members this option except at retirement.</p> <p>Although a member may not anticipate ever needing to access the Savings pot, and therefore be comfortable to transfer it all to the Retirement pot, in the event of a crisis they may regret this decision. Once they have transferred into the retirement pot it cannot be reversed. Practically, there would be situations where the member claims that they have made a mistake and would want retirement funds to reverse the transfer which would not be possible.</p>	<p>Recommend changing the election from being in the hands of the member, to being as prescribed in the fund rules. Then if a Fund believes that its members are sophisticated enough to fully understand the irreversible consequences of such a transfer, then they can provide for it in their fund rules.</p>



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			Obviously, such a transfer <u>at retirement</u> when the member determines how much they would like to annuitize would not be an issue, but it risks complexity if they are allowed this transfer pre-retirement.	
13	Para (c)	(c) the member may elect to transfer the value of the member’s interest in this pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;	What about part transfers? Transfer of different contracts? Part transfers as currently allowed in preservation funds and soon to be permitted in retirement annuity funds, need to be catered for. Each contract will have to be divided into separate pots and provision will need to be made for contracts to be transferred in their pots.	
14		Sub-paragraph (c) of the proviso to the definition of "Savings pot" (c) the member may elect to transfer the value of the member’s interest in this pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;	We support the option to transfer the Savings pot to the Retirement pot as it will enhance member’s options on retirement. However, we note that the Explanatory Memorandum, p6 (bottom) provides, <i>“it is proposed that Retirement pots and Savings pots cannot be split between funds i.e., you cannot transfer a Savings pot to another provider without also transferring the relevant Retirement pot to that same provider”</i> . As such, if a Savings pot is transferred, it has to be transferred along with the Retirement pot. It is not clear from this definition that the Retirement pot and Savings pot cannot be	Definition to cater for the transfer of all three pots, i.e. Vested pot (on its own if this is what is envisaged although splitting the 3 pots is not supported) and Savings & Retirement pots (together). Consider: (c) the member may elect to transfer the value of the member’s interest in this pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s Retirement pot in another pension fund, pension preservation fund, provident fund,



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			<p>transferred in isolation to another retirement fund.</p> <p>We suggest that the legislation clarifies in respect of occupational funds that this is only possible when a member transfers their retirement benefits to another fund upon cessation of service with their employer or upon s 14 (of the PFA) transfer of pension.</p> <p>Sub-paragraph (c) does not specify any limitations on when a member can transfer his/her 'Savings pot interest' (see proposed definition above). It would appear from the drafting that the member has the right to transfer his 'Savings pot' interest to his Retirement pot in the same fund or to the pots of another fund at any time and in isolation of any transfer of the interest in the Retirement pot. This cannot be a blanket right to transfer the interest in this pot. Currently, the member of an occupational fund cannot arbitrarily decide to transfer his benefits to another fund - it can only be done on termination of employment. In addition, it should be required that the three pots may only be transferred to another fund at the same time. The wording of sub-paragraph (c) needs to clearly specify the conditions under which a member can transfer his 'Savings pot interest', particularly when to another retirement fund.</p>	<p>provident preservation fund or retirement annuity fund, provided that the member's interest in the retirement pot is simultaneously transferred to the same fund;</p> <p>Alternatively, the following wording is Suggested:</p> <p><i>(c) the member may elect to transfer the value of the member's interest in this pot into the member's retirement pot in that fund <u>at any time</u> {or into the member's savings pot or member's retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund}. On transfer of the retirement pot interest to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, the member must also transfer the value of the member's interest in this pot into the member's savings pot or member's retirement pot in that other fund;</i></p> <p><u>Please note:</u> This suggestion is made in the event that Treasury does not accept the ASISA view that transfers between pots during fund membership</p>
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				is not required and should not be provided for (refer number 6.4 of the ASISA covering letter).
15		<p>Sub-paragraph (d) of the proviso to the definition of "Savings pot"</p> <p>(d) the interest or portion thereof of the member in this pot may be paid in the form of a savings withdrawal benefit</p>	As outlined above, the interest in the member's "Savings pot" is not defined. It is recommended that it be defined (refer to the suggestion in our comments above on para (c)).	<i>(d) the <u>Savings pot</u> interest or portion thereof [of the member in this pot] may be paid in the form of a savings withdrawal benefit</i>
16	Para (d)		Terminology used is confusing	<p>Alternate wording to that proposed in item 15 above:</p> <p>Deletion of the words “[the interest or portion thereof of the member in]” and replacement thereof of the following words:</p> <p><u>“the value of the member’s share standing to the credit of”</u></p>
17	Para (e)	(e) on the death of the member or former member , or on retirement of the member, the interest of the member in this pot must be deemed to be paid to a nominee or dependant of the member or former member or to the retired member as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second	<p>It does not appear to be necessary to refer to former member. Is this intended to refer to the member on death?</p> <p>It is assumed that the reference to 'deemed' in this instance relates to the nature of the benefit payable i.e. the benefit from the savings pot will be deemed to be a lump sum retirement benefit. It should be clarified that</p>	



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		Schedule and in the absence of a nominee or dependant, to the deceased's estate as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule."	this is what is being deemed as opposed to when such a benefit is deemed to accrue, which should follow the normal rules of accrual in the Second Schedule e.g. the death claim is deemed to accrue as a lump sum immediately before death.	
19	Para (e)		<p>Although the wording intends to set out the nature of the benefit payable, it may create the impression that it is prescribing the manner in which the benefit must be paid. It may cause confusion whether the benefit must be paid in terms of section 37C of the Pension Funds Act or first to a nominee, and in the absence of a nominee, to a dependant.</p> <p>It is unclear why there is a reference to former member.</p>	<p>Consider replacing with: (e) on the death of the member or former member, or on retirement of the member, the interest of the member in this pot must be deemed to be paid to a beneficiary nominee or dependant of the member or former member or to the retired member as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule and in the absence of a beneficiary nominee or dependant, to the deceased's estate as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule.</p> <p>Alternatively, reference to former member should be clarified.</p>
20	(e)	<p>Sub-paragraph (e) of the proviso to the definition of "Savings pot"</p> <p>(e) on the death of the member or former member, or on retirement of the member, the interest of the</p>	On the death or retirement of the member, the interest in the Savings pot is effectively deemed to be a retirement fund lump sum benefit. However, this does not take into account the fact that the member or	It is recommended that the member should be able to transfer his 'Savings pot interest' into his Retirement pot at retirement. On the death of the member, the nominee or dependant of



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		<p>member in this pot must be deemed to be paid to a nominee or dependant of the member or former member or to the retired member as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule and in the absence of a nominee or dependant, to the deceased’s estate as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule.”.</p>	<p>nominee/dependant may seek to take this benefit as an annuity.</p> <p>The current wording does not give the member or his/her nominee/dependant the opportunity to take the benefit in the Savings pot as an annuity.</p>	<p>the member should be able to do the same.</p> <p>The following wording is recommended:</p> <p><i>(e) on the death of the member or former member, or on retirement of the member, the <u>Savings pot</u> interest [of the member in this pot]</i> <i><u>(i) may, on election of the nominee, dependent of the member or former member or the former member, as the case may be, be transferred to the Retirement pot; or</u></i> <i><u>(ii) if not so transferred, must be deemed to be paid to [a] that nominee or dependant of the member or former member or to the retired member as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule and in the absence of a nominee or dependant, to the deceased’s estate as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule.”.</u></i></p>
21	(e)		<p>The reference to death benefit in this clause will lead to great confusion in the industry as it implies that the member’s share standing to the credit of the “savings pot” should be dealt with separately to the total lump sum benefit.</p>	<p>Deletion of reference to death benefit in sub-paragraph (e). Regarding reference to the member’s retirement, any amount withdrawn from the savings pot at retirement should not be</p>



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			The member’s share standing to the credit of the “savings pot” should not be viewed as separate to the balance of the member’s share standing to the credit of the “vested pot” and or the “retirement pot” that, prior to being claimed by the member, would form the total value of the lump sum benefit to be distributed in terms of section 37C of the Pension Funds Act.	seen as a savings withdrawal benefit but rather as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule, which results in the appropriate rate of tax being applied (retirement tax tables).
Definition - “savings withdrawal benefit”				
22	1(1)(a)	<p>“Savings withdrawal benefit” means a right of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund to a withdrawal from the “savings pot” provided by that fund, provided that:</p> <p>(a) the member’s right is limited to one withdrawal in any 12-month period; and</p> <p>(b) the value of each such withdrawal may not be less than R2000;”;</p>	<p>The current definition of the savings withdrawal benefit has been drafted as a “right” to a withdrawal from the Savings pot. A “benefit” from a fund should not be described as a right to a withdrawal. The definition should rather describe the portion of the member's interest in the Savings pot, being the amount in respect of which the member has exercised his/her right to withdraw.</p> <p>In addition, this wording must only refer to a member and not a former member. This will enable a member who takes a withdrawal and subsequently exits the fund within a few months (and becomes a former member) i.e the 12 month period hasn’t run its course, to still access the balance in the Savings Pot as a withdrawal. If this is not allowed, the former member could be precluded from accessing the</p>	<p>The definition of "Savings pot withdrawal benefit" should refer to an <u>amount</u> withdrawn from the "Savings pot" in the same way that a "severance benefit" in section 1 of the ITA or 'lump sum benefit" as defined in the Second Schedule to the ITA comprises an "amount".</p> <p>The following wording is recommended:</p> <p>““Savings withdrawal benefit” means <u>any amount received by or accrued to a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, as a consequence of a withdrawal paid to</u></p>



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			<p>benefits while exiting the fund due to the 12 month rolling period.</p>	<p><u>that member from the Savings pot provided by that fund before termination of membership of the fund</u> [a right of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund to a withdrawal from the “savings pot” provided by that fund], provided that...</p> <p><i>An alternative draft proposed by ASISA members is:</i></p> <p>“Savings withdrawal benefit” means a <u>portion of a member’s share of the value</u> of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund <u>that the member has elected to withdraw from the portion of the member’s share allocated to the “savings pot”</u> provided by that fund, provided that: (a) the member is limited to one <u>such</u> withdrawal in any 12-month period/year of assessment*; and (b) the value of each such withdrawal may not be less than R2000’;</p> <p><i>*depending on outcome of discussions with SARS proposed in item 23 below</i></p>
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23	1(1)(a)	<p>“Savings withdrawal benefit” means a right of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund to a withdrawal from the “savings pot” provided by that fund, provided that:</p> <p>(a) the member’s right is limited to one withdrawal in any 12-month period; and</p> <p>“(b) the value of each such withdrawal may not be less than R2000”</p>	<p>(a) It is not clear whether the 12 month period can be specified by a fund (e.g. financial year or calendar year) which would make two withdrawals within a rolling twelve month period possible, or whether 12 months must elapse before the next withdrawal.</p> <p>Some ASISA members are concerned that it will be administratively complex to monitor 12-month cycles for each Fund Member. They feel that there will be added complexity on transfers into the fund to obtain specific dates for each member regarding their specific withdrawal cycle.</p> <p>(b) Where a withdrawal has already been taken in the 12 month period and that member resigns from employment, it could lead to small balances remaining in the savings pot. Should a second withdrawal be permitted for values below R2000 upon resignation to deal with small balances?</p>	<p>Some ASISA members recommend an amendment confining the withdrawal right to once per tax year. Other ASISA members are comfortable that a rolling 12 month period can be managed and prefer this approach.</p> <p>We recommend that SARS and administrators discuss and resolve before legislation is finalised.</p> <p>(b) Consider a “small balance” withdrawal (i.e. an amount lower than R2000) if a member has made use of their one withdrawal during the 12 month period, for members who have resigned (i.e. where their balance in their “savings pot” is lower than the minimum on resignation).</p>
24	1(1)(a)		<p>It should be clear that the R2000 limit is to be calculated <i>before</i> any costs or charges are deducted.</p> <p>With regard to retirement annuity funds, where members can have multiple policies/contracts within the same fund, is the one withdrawal over a 12-month period per</p>	<p>Consider amendment:</p> <p>“Savings withdrawal benefit” means a right of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund to a withdrawal from the “Savings pot” provided by that fund <u>before</u></p>



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			<p>contract or across all contracts in that fund? Similarly, should the R2000 minimum be applied per contract or across all contracts? It will be administratively burdensome to ensure that only one withdrawal is done if it has to be applied across all of the contracts, (where the member has multiple contracts).</p> <p>It is also our understanding that the retirement fund rules will dictate the minimum amount allowed to remain in the Savings pot, considering the amounts in the Vested and Retirement pots, as it is not feasible to retain small amounts.</p>	<p><u>termination of membership of the fund</u>, provided that: (a) the member’s right is limited to one withdrawal in any 12-month period; and (b) <u>where a member has multiple contracts in the same fund, one withdrawal may be made from each of the contracts; and</u> (c) the value of each such withdrawal may not be less than R2000 <u>before any charges or transaction costs.</u></p>
25	1(1)(a) and (b)	<p>“Savings withdrawal benefit” means a right of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund to a withdrawal from the “savings pot” provided by that fund, provided that:</p>	<p>Does this definition sufficiently exclude a lumpsum withdrawal from the savings pot, to ensure such lump sums are not included in gross income at retirement, for tax purposes.</p> <p>Savings withdrawal benefit is intended to be included in definition of gross income, but lump sum withdrawals at retirement from savings pot should not be treated as gross income – as the tax implications/treatment will differ.</p>	<p>Proposed the inclusion in the definition of “retirement lump sum benefit” any lumpsum withdrawal from a savings pot at retirement.</p> <p>Furthermore, exclude lumpsum withdrawals from saving pot at retirement, from gross income.</p>
26	1(1)(a) and (b)		<ul style="list-style-type: none"> The definition of ‘savings withdrawal benefit’ potentially includes payments from the “savings pot” upon the retirement of the member from the fund 	<ul style="list-style-type: none"> We recommend adding an item to the proviso of the definition to exclude from its ambit, payments from the “savings pot” that are made upon the retirement of the



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			<p>and payments from the “savings pot” upon the death of a member.</p> <p>It is proposed that pre-retirement payments from the “savings pot” where the payment is not as a result of the death of the member should be taxed at marginal rates, while payments from the “savings pot” upon the retirement of the member from the fund and payments from the “savings pot” upon the death of a member should be taxed at the favourable “retirement fund lump sum” scales. Having one definition that encompasses both these scenarios and taxation regimes will be confusing.</p> <ul style="list-style-type: none"> • The new definition of “savings withdrawal benefit” is included in the definition of ‘gross income’ under new sub-paragraph (eD) <p>The inclusion of this amount in gross income without a corresponding inclusion in the definition of ‘remuneration’ implies that the savings withdrawal benefit will be taxed only on assessment. This will not be practical as the member would potentially not have the cash available to pay the tax on this benefit on assessment.</p> <ul style="list-style-type: none"> • Furthermore, industry requires clarity on the timing of the accrual of the savings withdrawal benefit. 	<p>member from the fund and payments from the “savings pot” that are made upon the death of a member.</p> <p>If this narrowing of the ambit of the definition is accepted, we also recommend specifically carving out “savings withdrawal benefits” from the 2nd Schedule by amending the definition of “lump sum benefit” in the 2nd Schedule to specifically exclude “savings withdrawal benefits”.</p> <ul style="list-style-type: none"> • We further recommend that the reporting requirement for this benefit be confirmed by SARS. <p>Please refer to par 6.2 of the ASISA covering letter. It is submitted that discussion between SARS and ASISA members’ administrative teams will be extremely beneficial in resolving the best solution before the legislation is finalized.</p>
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Amendments to the definition – “gross income”				
27	1(1)(b) Inclusion of par (eD) in the definition of "gross income"	“(eD) a “savings withdrawal benefit” other than any amount included under paragraph (e) and (eA);	A savings withdrawal benefit excludes any amount included under paragraph (e) and (eA) of the definition of gross income.	In order to entrench the fact that a "savings withdrawal benefit" is separate from other benefits payable from a retirement fund (including annuities) the following wordings is recommended: “(eD) a “savings withdrawal benefit” other than any amount included under <u>paragraph (a)</u> , paragraph (e) and (eA);”
28	Addition to definition of “gross income”	“(eD) a “savings withdrawal benefit” other than any amount included under paragraph (e) and (eA);	Occupational funds usually only record pensionable salaries and risk salaries on their systems, and retirement annuity funds and preservation funds do not record salaries and have no insight in this regard at all, funds will not be in a position to determine the income to be used to determine a member’s tax bracket.	
29			SARS interprets Paragraph 4(1)(a) of the Second Schedule to the Income Tax Act to mean that the entire benefit accrues for tax purposes if the member elects payment of a portion of his/her benefit. This is because there cannot be more than one tax accrual event in respect of the same benefit. The effect hereof is that a member cannot take a portion of the	Paragraph 4(1)(a) of the Second Schedule will have to be amended to prevent a tax accrual of a member’s total benefit when the member elects to receive only part of the Savings pot as a Savings withdrawal benefit from the Savings pot.



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			benefit in cash and preserve the rest in the fund until a later date.	
Amendments to definition - “pension fund”				
30	1(1)(c) Paragraph (i) of the proviso to the definition	(c) by the substitution in paragraph (i) of the proviso to the definition of “pension fund” of the following paragraph:...	The reference to the definition of 'pension fund' in the ITA is incorrect.	The reference should read: (c) by the substitution [in paragraph (i) of the proviso to] <u>in sub-paragraph (i) of the proviso to paragraph (c)</u> of the definition of pension fund:
31	1(1)(d)	(d) by the substitution in paragraph (ii) of the proviso to the definition of “pension fund” for subparagraph (dd) of the following subparagraph:	The reference to the definition of 'pension fund' in the Income Tax Act is incorrect	The reference should read: (d) by the substitution [in paragraph (ii) of the proviso to] <u>of (dd) in sub-paragraph (ii) of the proviso to paragraph (c)</u> of the definition of “pension fund” [for subparagraph (dd)] of the following subparagraph:
32	(1)(1)(d)	“(dd) that not more than one-third of the total value of the retirement interest <u>that exists in a vested pot prior to 1 March 2023</u> may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a	The wording here is problematic: Firstly, the term 'vested pot' could be confused with the T-Day 'VESTED BENEFITS' and NON-VESTED BENEFITS which some retirement funds have defined as such in their rules. As it is understood that the vested pot will contain both VESTED and NON-VESTED BENEFITS it is suggested that in order to avoid confusion, it is	“(dd) that not more than one-third of the [total value of the] <u>portion of the fund's</u> retirement interest that exists in [a] <u>that member's Vested pot interest [prior to 1 March 2023]</u> may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of



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		<p>combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”;</p>	<p>recommended that a different name be given to the vested pot e.g. “pre-1 March 2023 pot”.</p> <p>Secondly, the wording "prior to 1 March 2023" seems to specifically exclude any growth/fund return after 1 March 2023. ASISA recommends that the member's interest in each of the three pots be specifically defined in section 1 of the Act. The terms 'Vested pot interest', 'Savings pot interest' and 'Retirement pot interest' have therefore been included in this set of recommendations. ASISA therefore recommends that paragraph (dd) refer to the member's 'Vested pot interest' accordingly.</p> <p>Finally, the term 'retirement interest' is a defined term in the ITA and refers to the full value in the member's fund at retirement. The amount in the vested pot should therefore be a subset of the member's retirement interest. ASISA has recommended re-defining 'retirement interest' below in order to incorporate a member's interest in all of the three pots- the Savings pot, the Retirement pot and the Vested pot.</p>	<p>paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”;</p>
33	(1)(d)	<p>(d) by the substitution in paragraph (ii) of the proviso to the definition of “pension fund” for subparagraph (dd) of the following subparagraph:</p>	<p>The R 165 000 should apply to the total retirement interest to be annuitized and not to each of the “vested pot” and the “retirement pot” separately. See suggested amendment.</p>	<p>It is proposed that the following amended sub-section be utilized:</p> <p>(ii) paragraph (a), (b), (c) or (d) in respect of any year of assessment, if the Commissioner is satisfied that the</p>



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		“(dd) that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”		rules of the fund provide that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder, <u>calculated together with the total value of the member share standing to the credit of the “retirement pot”</u> , must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where <u>two-thirds of the total value calculated together with the total value of the member share standing to the credit of the “retirement pot”</u> , does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund.
34	(d)	“(dd) that not more than one-third of the total value of the retirement interest <u>that exists in a vested pot prior to 1 March 2023</u> may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a	The proviso to paragraph (dd) refers to the member's retirement interest. As ASISA proposes that the Vested pot benefit be defined it is proposed that the proviso be amended to include a reference to it.	“(dd) that not more than one-third of the total value of <u>the</u> vested pot interest may be commuted for a single payment and that the remainder , together with the retirement pot interest, must be paid in the form of an annuity (including a living annuity), a



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		<p>living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident annuity fund: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account-</p>		<p>combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value of the vested pot interest together with the retirement pot interest does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident annuity fund: Provided that in determining the value of the <u>Vested pot [retirement]</u> interest an amount calculated as follows must not be taken into account-</p>
35	Paragraph (d)	<p>(d) by the substitution in paragraph (ii) of the proviso to the definition of “pension fund” for subparagraph (dd) of the following subparagraph: “(dd) that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a</p>	<p>The legislation needs to be simplified. The term “retirement interest” includes the full fund value. Therefore it should then be considered what is excluded from annuitization and inserted in this paragraph only. There is duplication in the definitions of retirement pot and vested pot. In (dd) 1/3 of the retirement interest must be commuted for a lump sum and 2/3 must provide an annuity. The retirement interest includes all pots.</p> <p>What needs to be excluded is:</p> <ol style="list-style-type: none"> 1. All vested rights of provident fund members plus growth; 	



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		combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”	<ol style="list-style-type: none"> 2. For members 55 and over, contributions post 1 March 2021 3. the “savings pot”; 4. the emigration benefit. 	
36	1(1)(d)		<p>This proposed definition, when read with the proposed definition of “Vested pot” (which is the member’s total retirement fund value on 1 March 2023), seems to suggest that a member will, on 1 March 2023, lose his/her T-day VESTED BENEFIT, with the result that members can no longer commute their full fund value in a provident fund as at 1 March 2021, upon retirement</p> <p>If this is so, then this is a contradiction to the Media statement:</p> <p><i>“Existing funds: All contributions and growth that are accumulated before 1 March 2023 (i.e., retirement interest) will have to be valued at the date immediately prior to implementation, to enable vesting of rights (called the “Vested pot” a term used to refer to all the different funds a person may hold on that date). The rights of members in these funds will be protected – but it also means</i></p>	<p>This should be clarified.</p> <p>The application of the de minimis to the Vested pot and the Retirement pot should be clarified.</p>



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			<p><i>that the conditions that were attached to those contributions will remain in place.”</i></p> <p>The use of the word “remainder” seems to restrict the obligation to annuitise to the Vested pot as it does not refer to the Retirement pot. Although the definition for “Retirement pot” covers the provision for all the annuity types and combinations, does it mean the fund rules must from the effective date not just be in terms of the definition of pension fund, but also in terms of the new definitions of “Retirement pot”, “Savings pot” and “Vested pot”? Or is (e) (i) (aa) that refers to all 3 pots considered to be sufficient?</p> <p>It is not clear how the R165 000 full commutation rule must be applied. What does “total value” mean, the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 or the total value across all pots? This could be interpreted that the full value of the Vested pot can be taken as a cash lump sum if it is less than R165,000, irrespective of the size of the “Retirement pot”.</p>	<p>To make it clear, consider adding after “remainder” and before “must be paid” the following: <i>“and that the remainder of the total retirement interest must be paid, including to the Retirement pot,”</i>.</p> <p>The amount available for annuitization at retirement, being retirement pot and the annuitization portion of the vested pot (i.e. NON-VESTED T-day benefits), should be taken into account in calculating whether the de minimis applies.</p>
37	Paragraph (e) Pension Fund	(e) by the addition to the definition of “pension fund” of the following further proviso: “Provided further that the Commissioner may approve or recognise a fund contemplated in—	It seems that this “cease to be a resident” clause which applies to preservation and RA funds is now to be applicable to pension and provident funds because the retirement pot is only available on retirement.	



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		<p>(i) paragraph (a), (b) (c) or (d) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide—</p> <p>(aa) for the creation of the “savings pot”, “retirement pot” and “vested pot” as defined in section 1;</p> <p>(bb) that a member shall, prior to his or her retirement date, be entitled to the payment of—</p> <p>(A) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of</p> <p>(AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no.</p>	<p>However, it does not seem reasonable that the non-resident should have to wait 3 years for the savings pot. That should be able to be paid out immediately.</p> <p>The retirement pot and the savings pot can be taxed based on the withdrawal table.</p> <p>But the member should not have to wait 3 years for the savings pot or the vested pot if the member has not reached retirement date.</p>	
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		<p>13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p> <p>(B) an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of</p> <p>(AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act;</p>		
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		(ii) paragraph (a), (b) or (d) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund;”		
38	1(1)(e)		ASISA recognises that this additional proviso is now necessary since pension fund members currently only have the historical right to withdraw their vested benefits on termination of service or on transfer of their benefits. With the two-pot regime, it becomes important to specifically allow retirement access to the Savings pot and Retirement pot under specific	Our proposed wording is as follows: “Provided further that the Commissioner may approve or recognise a fund contemplated in— (i) paragraph (a), (b) (c) or (d) in respect of any year of assessment, if the



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			<p>circumstances (which would include cessation of residence etc).</p> <p>It is noted however that no reference is made to the vested pot here. Even though members can access their vested pots on termination of service, it is recommended that a reference to the vested pot also be included in this clause so that it is clear that members can also access their vested benefits on the same basis.</p> <p>The following wording in 1(1)(e) is problematic:</p> <p><u>(bb) that a member shall, prior to his or her retirement date, be entitled to the payment of—</u> <u>(A) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</u></p> <p>This wording implies that the entitlement is automatic as and when the amounts in the savings pot accrue. It is rather recommended that the wording refer to a member's <u>right to elect a withdrawal</u> of such a benefit.</p> <p>In addition, no reference is made to formal emigration prior to 1 March 2022 here. There is no reason why a taxpayer who has already emigrated should have to wait any time to be able to access their Savings pot (or any other pot) in a pension fund. Sub-paragraphs (AA),</p>	<p>Commissioner is satisfied that the rules of the fund provide—</p> <p>(aa) for the creation of the “savings pot”, “retirement pot” and “vested pot” as defined in section 1; (bb) that a member may [shall] prior to his or her retirement date, [be entitled] elect to receive the payment of— (A) an amount from the savings pot [paid] deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule [as a savings withdrawal benefit contemplated in section 1], where [a] that member— (AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or (BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to</p>
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			<p>(BB) below must be supplemented with (CC), which includes access as a consequence of emigration. This would be particularly problematic for taxpayers who emigrated with effect from 1 March 2022 (for instance) but who would now be required to wait until 1 March 2025 under the current provisions.</p> <p>In addition, it appears that the savings withdrawal benefit is taxed at the member's marginal tax rates when the member exists early e.g. due to cessation of residence. It is argued that the benefit payable in this instance should be deemed to be a lump sum benefit so that the Savings withdrawal benefit, the benefit taken from the Retirement pot as well as the benefit taken from the Vested pot will all be taxed under the same regime i.e. as lump sum benefits and in particular, 'retirement fund lump sum WITHDRAWAL benefits'.</p> <p>The same argument above with regard to emigration is applicable for sub paragraph (B) i.e benefits accessed from the Retirement pot.</p> <p>Finally, sub-paragraph (ii) wording "prior to 1 March 2023" seems to specifically exclude any growth/fund return after 1 March 2023. As mentioned previously, it is recommended that a reference be included to the member's 'Vested pot interest', which has been specifically defined and includes fund growth,</p>	<p>section 11 of the Act by the Director General, as defined in that Act; <u>(CC) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022;</u> and</p> <p>(B) an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of "visa" in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p>
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			<p>amounts credited and proportional reductions of that interest.</p>	<p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; <u>(CC) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or</u> <u>C) an amount from the vested pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</u> <u>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</u> <u>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of</u></p>
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				<p><u>(AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</u> <u>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act;</u> <u>(CC) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; of</u> (ii) paragraph (a), (b) or (d) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide that not more than one-third of the [total value of the retirement interest that exists in a member's Vested pot interest [prior to 1 March 2023] may be commuted for a single payment and that the remainder</p>
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Submitted on behalf of ASISA by Rosemary Lightbody

				<p>must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the vested pot interest and retirement pot interest does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund;”;</p>
39	1(1)(e)(i)(bb)(A)		<p>It is not clear why it is necessary to include this paragraph as a member can withdraw from the Savings pot under any circumstances, and not only on emigration.</p> <p>Is it perhaps to cater for instances where there had already been one withdrawal made in that 12-month period?</p> <p>It seems that Treasury wants to separate the two types of withdrawals from each other to allow the emigration withdrawal even if the one withdrawal from the Savings pot has already occurred.</p>	<p>The position if a member has already taken their Savings pot withdrawal for the 12-month period and then ‘emigrates’, the ‘3-year rule’ needs to be clarified.</p> <p><u>Please note:</u> As stated elsewhere, ASISA does not support taxing the withdrawal benefit upon emigration as a lump sum. It should be taxed as normal gross income as it would be if emigration was not happening. The drafting proposal above is in the event that Treasury does not accept this. If it is accepted, the drafting will need to be amended accordingly.</p>



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40	(1)(e)(i)(bb)(A)	<p>(A) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p>	<p>The sub-section refers to a “savings withdrawal benefit” the definition of which incorporates the prescribed quantum and time limitations. Is the intention to make provision for entitlement to the whole value of the “savings pot” in the instances contemplated? If so, sub-paragraph 1(e)(bb)(A) should be amended to “the member share standing to the credit of the savings pot, where a member —”.</p> <p>Further is it the intention that different tax tables apply to the “savings pot” and the “retirement pot” and the “vested pot” where the stated circumstances apply? Should one tax dispensation not apply to the whole member share to be accessed in the instances contemplated?</p>	
41	Paragraph (e)(ii) Pension Fund	<p>Provided further that the Commissioner may approve or recognise a fund contemplated in paragraph (a), (b) or (d) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide that not more than one-third of the total</p>	<p>Does this mean that a fund that is not providing for this will not be approved with effect from 1 March 2023? Or does it mean that it is optional for the fund to include the Two pot system in its rules?</p> <p>Do contributions of members of provident fund who were 55 on T-day belong in the vested</p>	<p>It is essential that clarification is provided.</p>



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		value of the retirement interest that exists in a <u>vested pot</u> prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund;”;	portion on retirement and 1/3 to the savings pot before retirement? Have to choose whether one refers to just the vested pot or refers to the retirement interest less certain exclusions. But it is conflated here.	
42	1(e)	“Provided further that the Commissioner may approve or recognise a fund contemplated in— ...”	The framing of this clause makes it unclear whether all funds will be compelled to make provision for the new “pots”.	If the proviso is to apply to all pension funds to be approved or recognized the provisions of the new proviso should simply be added to the current proviso provisions rather than creating a new proviso.
43	(1)(e)(ii)	(ii) paragraph (a), (b) or (d) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March	The R 165 000 should apply to the total retirement interest to be annuitized and not to each of the separate “vested pot” and the “retirement pot” separately. See suggested amendment.	It is proposed that the following amended sub-section be utilized: (ii) paragraph (a), (b), (c) or (d) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide that not more



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		<p>2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund;”;</p>		<p>than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder, <u>calculated together with the total value of the member share standing to the credit of the “retirement pot”</u>, must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund.</p>
44	1(1)(e)(ii)		<p>The reference to a transfer to a “provident fund” at the end of this paragraph should further be to a “provident preservation fund”.</p> <p>It is not clear why reference is only made to paragraph (a), (b) or (d) funds, and not also to paragraph (c) funds?</p> <p>It is also not clear what “paragraph (a), (b) or (d) refers to. Does it refer to the current paragraphs in the definition of “pension fund”?</p>	<p>To make it clear, consider adding after “remainder” and before “must be paid” the following: “and that the remainder of the total retirement interest must be paid including the Retirement pot,”.</p>



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Amendments to definition - “pension preservation fund”				
45	1(1)(f)	<i>(f)</i> by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph <i>(i)(aa)</i> of the following subparagraph: “ <i>(aa)</i> resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund <u>or who elected to transfer the amounts to the savings pot or retirement pot of that fund;</u> ”;	It is assumed from the changes that are proposed to the Second Schedule, that any transfers of the Savings pot, Retirement pot or Vested pot comprise 'lump sum benefits' as defined. It is therefore not necessary to include a specific reference to the member's specific election to transfer the pots themselves.	The following wording is recommended: <i>(f)</i> by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph <i>(i)(aa)</i> of the following subparagraph: “ <i>(aa)</i> resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund <u>including lump sum benefits transferred to the member's Savings pot or Retirement pot in that fund [or who elected to transfer the amounts to the savings pot or retirement pot of that fund];</u> ”
46	(1)(f) – (i)	<i>(f)</i> by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph <i>(i)(aa)</i> of the following subparagraph: “ <i>(aa)</i> resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund	The intention behind these proposed amendments is unclear. The “savings pot” and “retirement pot” should only be seen to be notional components of the total member share, which would be encapsulated in the current provisions of the definition of “pension preservation fund”. A member should not be allowed to transfer their “savings pot” to a preservation fund, leaving behind in the	Deletion of the proposed insertions with a new sub-clause to be inserted to clarify that monies standing to the credit of the “savings pot” the “retirement pot” and the “vested pot” in the transferor fund will be allocated to the corresponding “pots” in the transferee preservation fund.



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		<p>or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”;</p> <p><i>(g)</i> by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph <i>(ii)(bb)</i> of the following subparagraph:</p> <p>“<i>(bb)</i> if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to this pension preservation fund and who have made this election while they were members of that other fund or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”;</p> <p><i>(h)</i> by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (v) of the following subparagraph:</p> <p>“(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of</p>	<p>transferor fund the “vested pot” and the “retirement pot”.</p>	
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		<p>the Second Schedule transferred to this pension preservation fund and who have made this election while they were members of that other fund or who have elected to transfer the amounts to the savings pot or retirement pot of that fund;”;</p> <p>(i) by the substitution in paragraph (b) of the definition of “pension preservation fund” of the following paragraph:</p> <p>“(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in the savings pot or retirement pot or in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund by —;”;</p>		
47	<p>Paragraph (f) Pension preservation Fund</p>	<p>by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (i)(aa) of the following subparagraph: “(aa) resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund</p>	<ul style="list-style-type: none"> • The election of the member is an election to transfer to another approved fund and should not be an election to transfer to different pots. • There should be an overarching provision which stipulates that transfers take place to the equivalent pot in the transferee fund. 	



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		or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”;	<ul style="list-style-type: none"> The appropriate pot is not the election of the member. It should be in the rules of the fund that when a member transfers, it goes to the equivalent pot in the transferee fund, unless the member elects the more restrictive retirement pot. It is a transfer of the fund value and the transferee fund will allocate it to the applicable pot This crops up in numerous amendments and the legislation can be simplified with just a clause which requires the fund to allocate a transfer to the respective pots <p>In addition, clause 6B of the second schedule is unnecessary and paragraph 6 and 6A is sufficient.</p>	
48	(f) – (i)	or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”;	Does not cater for transfers from a vested pot into a vested pot	or who elected to transfer the amounts to the savings pot, <u>vested pot</u> or retirement pot of that fund;
49	1(1)(d) 1(1)(m) 1(1)(q) 1(1)(z) 1(1)(cc)	The proposals require that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of	The proposals are silent on the retention of the determination of VESTED and NON-VESTED T-day benefits in funds for purposes of annuitisation of provident fund benefits under the new ‘vested pot’.	We recommend / request the following; <ul style="list-style-type: none"> Deletion of the words “prior to 1 March 2023” from the proposed insertion of “that exists in a vested pot prior to 1 March 2023” as the definition of “vested pot” already makes this clear. Retention of the current provisos to the definitions of the various approved funds which provide for



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		<p>types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident</p>		<p>the maintenance of existing provident fund annuitisation rights and that, if the member wants to purchase more than one annuity, the purchase consideration for each annuity must be at least R165 000.</p> <ul style="list-style-type: none"> • The addition in the portion of the above-mentioned provisos dealing with amounts which are “permitted in terms of the Pensions Fund Act to be deducted” from member individual accounts / reserves, of amounts which are permitted to be deducted <u>in terms of the Income Tax Act</u> from such member individual accounts / reserves (so that that for purposes of this subparagraph only the vested pot interest and retirement pot interest are included) • Further clarification from National Treasury regarding the implementation of their intention under these clauses <i>vis a vis</i> the retention of the vested rights of provident fund members who were 55 years or older on 1 March 2021 in respect of their rights to their provident fund benefits.
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50		<p>(f) by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (i)(aa) of the following subparagraph: “(aa) resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”</p>	<p>Does definition of preservation funds still sufficiently exclude existing members of a preservation fund transferring into retirement annuity fund?</p> <p>Currently Preservation funds definition refers to membership of a preservation fund being dependent on “former member of pension/provident fund”. We are concerned that existing members of a preservation fund would meet the membership requirement and the definition of vested pot allows for transfer between all fund types. Would this therefore allow an existing member of preservation fund to transfer a vested retirement annuity fund pot into a preservation fund?</p>	<p>Clarity is requested as we unsure of the intention around transfer to vested pots between various funds.</p>
51	1(1)(g)	<p>(g) by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (ii)(bb) of the following subparagraph: “(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to this pension preservation fund and who have made this election while they were members of that other fund <u>or who elected to transfer the amounts to</u></p>	<p>It is assumed from the changes that are proposed to the Second Schedule, that any transfers of the Savings pot, Retirement pot or Vested pot comprise 'lump sum benefits' as defined. It is therefore not necessary a specific reference to the member's specific election to transfer the pots themselves.</p>	<p>(g) by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (ii)(bb) of the following subparagraph: “(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to this pension preservation fund <u>including lump sum benefits transferred to the member's Savings pot or Retirement pot in that fund</u> and who have made this election while they were members of that other fund <u>[or who elected to transfer the</u></p>



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		<u>the savings pot or retirement pot of that fund];</u>		amounts to the savings pot or retirement pot of that fund];
52	Paragraph (h) Pension preservation	by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (v) of the following subparagraph: “(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension preservation fund and who have made this election while they were members of that other fund or who have elected to transfer the amounts to the savings pot or retirement pot of that fund];	Same comment as above in par (g). This is just a deferred benefit.	
53	1(1)(f) & (g) & (h)	The phrase “or who elected to transfer the amounts to the savings pot or the retirement pot of that fund” is to be added to item (a)(i)(aa) of the definition of pension preservation fund	The purpose of this part of the definition of “pension preservation fund” is to stipulate who can become members of preservation funds. The proposed inserted phrase seems to indicate that a member of a pension / provident fund may, while they are still employed and a member of such fund, elect to transfer a component of their benefits to a preservation fund.	If this is not the intention, then we suggest not adding in this phrase.



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54	1(1)(h)	<p>(h) by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (v) of the following subparagraph:</p> <p>“(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension preservation fund and who have made this election while they were members of that other fund <u>or who have elected to transfer the amounts to the savings pot or retirement pot of that fund;</u>”</p>	<p>The benefits on transfer of the Savings pot and the Retirement pot comprise "lump sum benefits" as defined. It is therefore not necessary to specify a member's election to transfer such benefits.</p>	<p>(h) by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (v) of the following subparagraph:</p> <p>“(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension preservation fund and who have made this election while they were members of that other fund <u>including lump sum benefits transferred to the member's Savings pot or Retirement pot in that fund [or who have elected to transfer the amounts to the savings pot or retirement pot of that fund];</u>”</p>
55	1(1)(i)	<p>(i) by the substitution in paragraph (b) of the definition of “pension preservation fund” of the following paragraph:</p> <p>“(b) payments or transfers to the fund in respect of a member are limited to any <u>amount contemplated in the savings pot or retirement pot</u> or in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the</p>	<p>Please see proposed change as indicated.</p>	<p>(i) by the substitution in paragraph (b) of the definition of “pension preservation fund” of the following paragraph:</p> <p>“(b) payments or transfers to the fund in respect of a member are limited to any <u>amount [contemplated] in the savings pot or retirement pot</u> or in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds</p>



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		Pension Funds Act that is paid or transferred to the fund by —;”		Act that is paid or transferred to the fund by —”;
56	1(1)(i)	The phrase “in the savings pot or retirement pot or” have been added to item (b) of the definition of pension preservation fund	The purpose of this part of the definition of “pension preservation fund” is to stipulate the types of transfers into preservation funds that are permitted. We assume that the intention behind the proposed insertion is to provide that transferee preservation funds may only accept monies from other approved funds, if the relevant member balances in the “vested”, “savings” and “retirement” pots are allocated to reciprocal pots in the transferee preservation fund.	If this is the intention, then we suggest reformulating the definition to make this intention clear and also referencing the “vested pot”.
57	Insert before section 1(1)(j)	(c) with the exception of amounts transferred to any other pension fund, pension preservation fund, or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other preservation fund: Provided that-	It is noted that the main body of paragraph (c) has not been amended to specifically ensure that the member's one withdrawal can only be taken from the Vested pot. It is therefore recommended that paragraph (c) be amended accordingly	(c) with the exception of amounts transferred to any other pension fund, pension preservation fund, or retirement annuity fund, not more than one amount <u>from the member's Vested pot as</u> contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other preservation fund: Provided that-
58	1(1)(j)	by the substitution in paragraph (c) of the definition of “pension preservation fund” for subparagraph (i) of the following subparagraph:	We understand that the purpose of this part of the definition of “pension preservation fund” is to provide that the “once-off” withdrawal regime that we are familiar with in	We suggest that item the preamble to (c) of the definition is amended to provide that the “once-off withdrawal” regime only applies to balances in the



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		“(i) this paragraph applies separately to each payment or transfer to the [fund contemplated in paragraph (b)] vested pot or in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund—	preservation funds, applies <u>per tranche of benefit that is transferred into the preservation fund</u> . We assume that this regime will remain in place in respect of the benefits in the “vested pot” and so this part of (c) of the definition should not be tampered with. Instead, the preamble to (c) should be amended to provide for this “narrow” application of the “once-off” withdrawal regime. A separate provision should be added to the definition of pension preservation fund to provide for the operation of the “savings” and “retirement” pots from the Two pot implementation date.	“vested pot”. Otherwise (c) should be left “as is” and we recommend that a <u>separate</u> provision is added to the definition of pension preservation fund to provide for the operation of the “savings” and “retirement” pots from implementation date.
59	1(1)(k)	(k) by the substitution in paragraph (c) of the proviso to the definition of “pension preservation fund” for subparagraph (ii) of the following subparagraph: “(ii) a member shall, prior to his or her retirement date, be entitled to the payment of— (aa) a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member— (A) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes on	There should be no reason why an amount that is taken from the savings pot on cessation of residence should not comprise a lump sum benefit and consequently taxed as a retirement fund lump sum withdrawal benefit in terms of the lump sum tax tables. Taxing it in terms of the lump sum tables on exit from the provident preservation fund will align it with the tax treatment of the same benefit (i.e. taken from the Savings pot) at retirement, which is also treated as a lump sum. It will also be aligned with the benefit taken from the Retirement pot at the same time. It is further recommended that a member also be entitled to access these benefits on emigration.	(k) by the substitution in paragraph (c) of the proviso to the definition of “pension preservation fund” for subparagraph (ii) of the following subparagraph: “(ii) a member shall, prior to his or her retirement date, be entitled to the payment of— (aa) a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member— (A) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes on exchange control in respect of applications for that



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		<p>exchange control in respect of applications for that recognition received or on before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of the currency on or before 28 February 2022; or</p> <p>(B) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(C) departed from the Republic at the expiry of a visa obtained for the purposes of</p> <p>(AA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p>		<p>recognition received or on before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of the currency on or before 28 February 2022; or</p> <p>(B) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(C) departed from the Republic at the expiry of a visa obtained for the purposes of -</p> <p>(AA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p> <p>(bb) an amount from the savings pot <u>deemed to be paid as [a savings withdrawal] lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule [section 1]</u>, where a member—</p>
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		<p>(bb) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(A) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(B) departed from the Republic at the expiry of a visa obtained for the purposes of (AA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p> <p>(cc) an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</p> <p>(A) is a person who is not a resident for an uninterrupted period of three</p>		<p>A) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(B) departed from the Republic at the expiry of a visa obtained for the purposes of (AA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; [and] <u>or</u></p> <p><u>(C) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes on exchange control in respect of applications for that recognition received or on before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of the currency on or before 28 February 2022; and</u></p>
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Submitted on behalf of ASISA by Rosemary Lightbody

		<p>years or longer on or after 1 March 2021; or</p> <p>(B) departed from the Republic at the expiry of a visa obtained for the purposes of</p> <p>(AA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p>		<p>cc) an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</p> <p>(A) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(B) departed from the Republic at the expiry of a visa obtained for the purposes of</p> <p>(AA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; [and] or</p> <p><u>(C) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes on exchange control in respect of applications for that recognition received or on before 28</u></p>
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Submitted on behalf of ASISA by Rosemary Lightbody

				<u>February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of the currency on or before 28 February 2022; and</u>
60	1(k)(bb)		<p>The sub-section refers to a “savings withdrawal benefit” the definition of which incorporates the prescribed quantum and time limitations. Is the intention to make provision for entitlement to the whole value of the “savings pot” in the instances contemplated? If so, sub-paragraph 1(k)(bb)(A) should be amended to “the member share standing to the credit of the savings pot, where a member –”.</p> <p>Further is it the intention that different tax tables apply to the “savings pot” and the “retirement pot” and the “vested pot” where the stated circumstances apply? Should one tax dispensation not apply to the whole member share to be accessed in the instances contemplated?</p>	
61	1(1)(k)(ii)(bb)		<p>It is not clear why it is necessary to include this paragraph as a member can withdraw from the Savings pot under any circumstances, and not only on emigration.</p> <p>Is it perhaps to cater for instances where there had already been one withdrawal made in that 12-month period?</p>	The position if a member has already taken their Savings pot withdrawal for the 12-month period and then ‘emigrates’, ‘3-year rule’ needs to be clarified.



Submitted on behalf of ASISA by Rosemary Lightbody

			It seems that Treasury wants to separate the two types of withdrawals from each other to allow the emigration withdrawal even if the one withdrawal from the Savings spot has already occurred.	
62	(k) Def Pension Preservation Fund 1(1)(k)(ii)(cc)	an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—	There is no provision to access the “vested pot”.	an amount from the retirement <u>pot and vested</u> pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—
63	1(l)	“(l) by the substitution in paragraph (c) of the proviso to the definition of “pension preservation fund” for subparagraph (iii) of the following subparagraph: (iii) a member who has transferred a retirement interest in terms of paragraph 2(1)(c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) of the Second Schedule in respect of that transferred amount, except to the extent that it is an amount contemplated in subparagraph (ii) <u>or the savings pot of that fund; and;</u> ”;	Incorrectly framed insertion.	Rather include a new proviso - (iii) a member who has transferred a retirement interest in terms of paragraph 2 (1) (c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2 (1) (b) (ii) in respect of that transferred amount, except to the extent that it is an amount contemplated in subparagraph (ii) and <u>nothing in this sub-section shall limit the member’s right to claim a savings withdrawal benefit from the fund</u>



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64	1(1)(l)		It would appear as if the benefit taken from the savings pot will be regarded as a savings withdrawal benefit as defined and not a lump sum benefit. It is however recommended that it be deemed to be a lump sum benefit for the reasons outlined above.	(l) by the substitution in paragraph (c) of the proviso to the definition of “pension preservation fund” for subparagraph (iii) of the following subparagraph: “(iii) a member who has transferred a retirement interest in terms of paragraph 2(1)(c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) <u>of the Second Schedule</u> in respect of that transferred amount, except to the extent that it is an amount contemplated in subparagraph (ii) <u>or the savings pot of that fund</u> ; and;”;
65	None at present	The proviso to paragraph (e) of the definition of “pension preservation fund”: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account-	The proviso to paragraph (dd) refers to the member's retirement interest. As the Vested pot benefit has now been defined it is proposed that the proviso be amended to include reference to it.	Provided that in determining the value of the Vested pot [retirement] interest an amount calculated as follows must not be taken into account-
66	1(1)(m)		Comment above regarding the proposed amendment to the definition of “pension fund” and below - the proposed definition of “Vested pot” repeated.	



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67	1(1)(m) (e)	“(e) not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted	As above, wording seems to imply only 1/3 of retirement interest that exists prior to 1 March 2023.	
68	1(m)	“(e) not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”;	The R 165 000 should apply to the total retirement interest and not to each of the separate “vested pot” and the “retirement pot” separately. See suggested amendment.	It is proposed that the following amended sub-section be utilized: “(e) not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder, <u>calculated together with the total value of the member share standing to the credit of the “retirement pot”</u> , must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value of the vested pot together with the retirement pot does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”



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Definition of "Retirement Pot"				
69	Paragraph 1(1)(o); the definition of "Retirement pot"	<p>"Retirement pot" means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that:</p> <p>(a) not less than two-thirds of the total retirement contributions by that member or transfers to a pension preservation fund or provident preservation fund on or after 1 March 2023 is allocated to that pot; Provided that in determining the value of the contributions an amount calculated as follows must not be taken into account—</p> <p>(i) any amount contributed or transferred to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund relating to the period prior to 1 March 2023; and</p> <p>(ii) charges and risk premiums</p>	<p>In (a) it is not clear why transfers to preservation funds have been included in the way that they have.</p> <p>The retirement pot should consist of 2/3 of all contributions to the fund after 1 March 2023 plus transfers to the retirement pot from the retirement pots of other funds, plus growth.</p> <p>When determining the value of the contributions there is no need to exclude pre 1 March 2023 amounts as the definition is "two thirds of contributions AFTER 1 March 2023."</p> <p>There seems to be confusion in the drafting between retirement interest and retirement pot.</p> <p>Retirement pot is part of the member's 'retirement interest' as defined. The definition of the funds already state what must happen on annuitization and deal with what should not be annuitized.</p> <p>It is not necessary to state what is NOT in the retirement pot. The definition of the Vested pot will state that 2/3 of provident fund member 55+ will be allocated to the vested pot</p>	



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		<p><i>(b)</i> all contributions not allocated to the savings pot must be allocated to the retirement pot;</p> <p><i>(c)</i> the total value of the retirement interest must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund: Provided that in determining the value of retirement interest an amount calculated as follows must not be taken into account—</p> <p><i>(i)</i> in the case of a person who is or was a member of a provident fund or provident preservation fund and who is or was 55 years of age or older on 1 March 2021,</p> <p><i>(aa)</i> two-thirds of the members contribution to a provident fund or transfers to a provident preservation fund on or after 1 March 2023;</p>	<p>and the savings pot should include 1/3 of contributions after 1 March 2023.</p>	
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		<p>(bb) with the addition of any other amount credited to the member’s individual account or minimum individual reserve of the provident fund or provident preservation fund on or after 1 March 2023; and</p> <p>(cc) any fund return, as defined in the Pension Funds Act, in relation to the contribution or transfers contemplated in item (aa) or amounts credited contemplated in item (bb);</p> <p>(d) the member may elect to transfer the value of the retirement interest in this pot into the member’s retirement pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”.</p>	<p>(d) this is not the election of the member. It is the default in the fund rules. The member elects to transfer to another fund but the pots go across together and are allocated according to the fund rules (which must require the different pots to be transferred into the same types of pot in the transferor fund) and not according to the member’s election.</p>	
70	1(1)(o) (a)	<p>...provided that the rules of the fund provide that</p> <p>(a) not less than two-thirds of the total retirement contributions by that member or transfers to a pension preservation fund or provident preservation fund on or after 1 March 2023 is allocated to that pot;</p>	<p>Transfers should also include transfers to retirement annuity funds.</p>	<p>Fund return should be incorporated into the definition. Adjust the clause as follows: ““Retirement pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a</p>



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				member of that fund, provided that the rules of the fund provide that (a) not less than two-thirds of the total retirement contributions by that member or transfers to a pension preservation fund, provident preservation fund <u>or retirement annuity fund</u> on or after 1 March 2023 is allocated to that pot;
71	1(1)(o)(a)(i)	any amount contributed or transferred to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund relating to the period prior to 1 March 2023”	It is not clear what is meant by “ any amount ... transferred to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund relating to the period prior to 1 March 2023”. Does this relate to transfers prior to 1 March 2023, or to transfers comprised of contributions payable before 1 March 2023, regardless of whether or not the transfer takes place before or after 1 March 2023?	<p>In the case of contributions, clarify whether it is the date of payment of contributions or the date that contributions become payable.</p> <p>In the case of transfers, clarify the date of transfer.</p> <p>For non-voluntary transfers it is assumed that the date is the effective date of the Section 14 transfer and for voluntary transfers it is the date of election by the member.</p> <p>Consider replacing “<i>the period prior to 1 March 2023</i>” with “<u>the Vested pot</u>”.</p>
72	1(1)(o)(b)	“ all contributions not allocated to the Savings pot must be allocated to the Retirement pot”	“Future credits”, being amounts that may be contributed to the fund for e.g. s13B (arrear contributions) recoveries from the employer; approved disability lump sum benefits need to	



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			be allocated 1/3-2/3 across the Savings and Retirement pots.	
73	1(1)(o)	No current definition of the member's interest in the Retirement pot	<p>The definition of 'Retirement pot' refers to the member's "retirement interest" in the Retirement pot but does not define it.</p> <p>It is recommended that the member's interest in the Retirement pot is defined so that what comprises that pot is ascertainable i.e. contributions plus fund returns plus amounts credited, less deductions/ reductions in terms of section 37D in respect of divorce orders, etc.</p>	<p>A member's interest in the Retirement pot should be specifically defined in Section 1 of the ITA.</p> <p><u>'Retirement pot interest' includes:</u></p> <p><u>(a) any amount contributed to the Retirement pot as prescribed in the definition of "Retirement pot";</u></p> <p><u>(b) with the addition of any other amount credited to the member's Retirement pot on or after 1 March 2023, and</u></p> <p><u>(c) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in item (a) or amounts credited contemplated in subitem (b),</u></p> <p><u>reduced proportionally with respect to a member's interest in the Vested pot and Savings pot respectively, by an amount permitted in terms of the Pension Funds Act to be deducted from the Retirement pot on or after 1 March 2023.</u></p>



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74	1(o)	<p>(c) the total value of the retirement interest must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund:</p>	<p>The R 165 000 should apply to the total retirement interest to be annuitized and not to each of the separate “vested pot” and the “retirement pot” separately. See suggested amendment.</p>	<p>It is proposed that the following amended sub-section be utilized:</p> <p>“(c) the total value of the retirement interest must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where the total value, <u>calculated together with two-thirds of the value standing towards the value of the “vested pot”</u> does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>
75	1(o)	<p>(c) the total value of the retirement interest must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension</p>	<p>It is unclear to us how the contributions of provident fund members who are over 55 on 1 March 2021 are to be allocated post implementation date. It would appear that these members must allocate their contributions to the savings pot and the retirement pot. However, it would seem that amounts contributed to the “retirement pot” are excluded for annuitization purposes? The definition of “retirement pot” and “vested pot” are further contradictory in that sub-paragraph (c) of the definition of “vested pot” seems to</p>	<p>It is assumed that it is National Treasury's intention for over 55 provident fund members to contribute up to 1/3 to the savings pot and the balance of contributions to automatically continue being made to the vested pot. This should be clarified in the drafting.</p> <p>An alternative proposed is that members that were over the age of 55 years as at 1 March 2021 must</p>



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		<p>preservation fund, provident preservation fund or a retirement annuity fund: Provided that in determining the value of retirement interest an amount calculated as follows must not be taken into account—</p> <p>(i) in the case of a person who is or was a member of a provident fund or provident preservation fund and who is or was 55 years of age or older on 1 March 2021, <i>(aa)</i> two-thirds of the members contribution to a provident fund or transfers to a provident preservation fund on or after 1 March 2023; <i>(bb)</i> with the addition of any other amount credited to the member’s individual account or minimum individual reserve of the provident fund or provident preservation fund on or after 1 March 2023; and <i>(cc)</i> any fund return, as defined in the Pension Funds Act, in relation to the contribution or transfers contemplated in item (aa) or amounts credited contemplated in item (bb);</p>	<p>contemplate that those members can continue to contribute to the “vested pot” post implementation date?</p> <p>Clarity is required whether members will have a choice as to where their contributions will be allocated.</p>	<p>contribute to the savings pot and retirement pot only and are required to annuitize monies standing to the credit of the retirement pot at retirement, subject to the applicable de minimis.</p> <p>If the intention is to provide members with a choice, then it is proposed that they either opt to contribute to the vested pot only, or to the savings and retirement pot only.</p>
76	1(1)(o)(c)	<p>c) the total value of the retirement interest must be paid in the form of an annuity (including a living</p>	<ul style="list-style-type: none"> • See above - recommend using the word “member” and not “employee” 	



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		annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where the total value does not exceed R165 000, where the <u>employee</u> is deceased or where the <u>employee</u> elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund: Provided that	<ul style="list-style-type: none"> Options in respect of retirement pot for nominees / dependants on the member’s death not dealt with. 	
77	1(1)(o)		<p>Housing loans will be problematic.</p> <p>In respect of housing loans, only the Retirement pot may be taken into account when applying for a housing loan, because the Savings pot may be used up by the member, unless the administrator “flags” the Savings pot to prevent the member from accessing it.</p> <p>If a member resigns from employment, where will the housing loan be settled from if the member only has a Retirement pot?</p> <p>What if member retires early and the housing loan is not settled and the Savings pot is not enough?</p> <p>With T-day we saw funds limiting the maximum loan to the value of the vested fund</p>	<p>Also clarify from which pots a housing loan can be made, considering that if a housing loan from the Retirement pot is allowed, it will effectively constitute a cash withdrawal at termination of employment, both before and at retirement.</p> <p>Not sure credit providers will be comfortable if a loan endorsement on the Retirement pot is transferred alongside the pot to another fund.</p>



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			credit and 1/3 rd of the non-vested fund credit. Strictly speaking the loan needs to be limited to the value of the Vested pot and the Savings pot as it cannot be taken from the Retirement pot.	
78	Paragraph 1(1)(o)(c)	the total value of the retirement interest must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund: Provided that in determining the value of retirement interest an amount calculated as follows must not be taken into account— (i) in the case of a person who is or was a member of a provident fund or provident preservation fund and who is or was 55 years of age or older on 1 March 2021, (aa) two-thirds of the members contribution to a provident fund or	Should the word here be “retirement interest” because that includes vested portion and savings pot. Does this not apply only to retirement pot (it should also apply to vested pot) but it should not apply to the savings pot. Members of a provident fund who were over age 55 at T-day, should be in the vested pot for retirement purposes but 1/3 of contributions should be in the savings pot to be taken as a lump sum. Is this not conflating vested pot and retirement pot? We don’t understand the 2/3 contributed to a provident fund etc. Why is that excluded?	Reference to employee to be replaced with member.



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		transfers to a provident preservation fund on or after 1 March 2023; (bb) with the addition of any other amount credited to the member’s individual account or minimum individual reserve of the provident fund or provident preservation fund on or after 1 March 2023; and (cc) any fund return, as defined in the Pension Funds Act, in relation to the contribution or transfers contemplated in item (aa) or amounts credited contemplated in item (bb);		
79	1(1)(o)	(c) the total value of the retirement interest must be paid in the form of an annuity (including a living annuity).”	The “retirement pot” is a component of “retirement interest” – it is not retirement interest and in the light of the fact that the definition purports to regulate how the “retirement pot” should be applied, it is our contention that the reference here should be to “retirement pot” rather than “retirement interest”.	We therefore recommend that the reference in this item of the definition is to “retirement pot” rather than to “retirement interest”. The rest of the definition should be deleted. See our suggested amendments to the further proviso to the definition of “pension fund” etc. to deal with how the annuitisation and commutation rights of the various pots should be provided for.
80	1(1)(o) (c)	“the total value of the retirement interest must be paid in the form of an annuity (including a living annuity), a combination of annuities	Total value of retirement interest is calculated with reference to the total fund value. Is the reference to “where the total value does not exceed R165 000” correct, or should it be	Reference to employee to be replaced with member.



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		(including a combination of methods of paying the annuity) or a combination of types of annuities except where the total value does not exceed R165 000 ...” .. where the employee is deceased.	“where two-thirds of the total value of the vested pot and retirement pot does not exceed R165 000”? Alternatively - “of the total value of the vested pot together with the Retirement pot does not exceed R165 000”?	
81	1(1)(o) (c)(i)(aa)		Does this mean that a third of the contributions of a provident fund member aged 55 years or older on 1 March 2021 falls into the Retirement pot, and must be used to purchase an annuity?	Clarification required regarding the impact on provident fund members who were 55 years and older on 1 March 2021 and whether the compulsory annuitization will apply on one third of the contributions post effective date. The proposed wording seems to imply that the one third must be used to purchase a compulsory annuity.
82	1(1)(o)(d)	“the member may elect to transfer the value of the retirement interest in this pot into the member’s Retirement pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”	The use of the term “retirement interest” in this context is not correct as “retirement interest” in terms of the Income Tax Act is a member’s total fund value on the date on which he/she elects to retire.	It is submitted that “ <i>the value of the retirement interest in this pot</i> ” should be replaced with “ <i>the value of the member’s interest in this pot</i> ”.
83	1(o)	(d) the member may elect to transfer the value of the retirement interest in this pot into the member’s retirement pot of another pension fund, pension preservation fund,	A member should not be entitled to elect to transfer out his or her member share standing to the credit of the retirement pot, while leaving the balance of his or her member share in the fund.	Proposed replacement with the following paragraph: “On transfer of a member’s interest in an approved pension fund, pension



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		provident fund, provident preservation fund or retirement annuity fund.”.		preservation fund, provident fund, provident preservation fund or retirement annuity fund to another approved fund, the value of the member’s share standing to the credit of this pot, will be credited to the “retirement pot” in the transferee fund”;
84	(1)(p)	“(i) that the fund is a permanent fund <i>bona fide</i> established solely for the purpose of providing benefits for employees on retirement date or solely for the purposes of providing [benefits] annuities for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in “savings withdrawal benefit” in section 1, paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and”	The deletion of the word “benefits” and the insertion of “annuities” is not supported in that lump sum death benefits are not necessarily paid by way of annuity.	
85	1(q)	“(dd) that not more than one-third of the total value of the retirement interest that exists in a vested pot	The R 165 000 de minimis should apply to the member's portion of the retirement interest to be annuitized and not to each of the separate	“(dd) that not more than one-third of the total value of the retirement interest that exists in a vested pot prior



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		<p>prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>	<p>“vested pot” and the “retirement pot” separately. See suggested amendment.</p>	<p>to 1 March 2023 may be commuted for a single payment and that the remainder, <u>calculated together with the total value of the member share standing to the credit of the “retirement pot”</u>, must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value of the vested pot together with the retirement pot does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>
86	<p>Amendments to definitions of provident funds, provident preservation funds and retirement annuity funds</p>	<p>The same comments set out above applicable to the definitions of Pension and pension preservation funds, apply to provident funds, provident preservation funds and retirement annuity funds and are not all repeated.</p>		



Submitted on behalf of ASISA by Rosemary Lightbody

Amendment of Definition – “provident fund”				
87	Paragraph 1(1)(r) - (iii)	<p>“Provided further that the Commissioner may approve or recognise a fund contemplated in - (i) paragraph (a), (b) or (c) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide -</p> <p>(iii) that not more than one-third of the total value of the retirement interest that exists in a Vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund;”</p>	<p>Comment above on the proposed amendment to the definition of “pension fund” and below - the proposed definition of “Vested pot” repeated.</p> <p>The reference to a transfer to a “provident fund” at the end of this paragraph should further be to a “provident preservation fund”.</p> <p>Why are par (d) funds excluded? (in the pension fund definition, reference is made to par (a), (b) or (d) funds – see 1(1)(e) above).</p>	
88	1(r)	<p>“Provided further that the Commissioner may approve or</p>	<p>The framing of this clause makes it unclear whether all funds will be compelled to make provision for the new “pots”.</p>	<p>If the proviso is to apply to all provident funds to be approved or recognized the provisions of the new proviso should</p>



Submitted on behalf of ASISA by Rosemary Lightbody

		recognize a fund contemplated in— ...”		simply be added to the current proviso provisions.
89	(1)(r) (i)(bb)(A)	<p>(bb) that a member shall, prior to his or her retirement date, be entitled to the payment of—</p> <p>(iii) (A) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p>	<p>The sub-section already refers to a “savings withdrawal benefit” which incorporates the prescribed quantum and time limitations. Is the intention to make provision for entitlement to the whole value of the “savings pot” in the instances contemplated? If so, subparagraph(r)(i)(bb)(A) should be amended to “the member share standing to the credit of the savings pot, where a member...”</p> <p>Further, is it the intention that different tax tables apply to the “savings pot” and the “retirement pot” and the “vested pot” where the stated circumstances apply? Should one tax dispensation not apply to the whole member share to be accessed in the instances contemplated?</p>	



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90	1(r)(iii)	(iii) paragraph (a), (b) or (c) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund;”	The R 165 000 should apply to the member's portion of the retirement interest to be annuitized and not to each of the separate “vested pot” and the “retirement pot” separately. See suggested amendment.	It is proposed that the following amended sub-section be utilized: “paragraph (a), (b) or (c) in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 be commuted for a single payment and that the remainder, <u>calculated together with the total value of the member share standing to the credit of the “retirement pot”</u> , must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value of the vested pot and retirement pot does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund;”
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ASISA COMMENT ON 2022 DRAFT REVENUE LAWS AMENDMENT BILL: TWO-POT SYSTEM

29 August 2022 – Annexure to letter of same date



Submitted on behalf of ASISA by Rosemary Lightbody

Amendment of definition of “provident preservation fund”				
91	1(s),(t), (u), (v),(w),(x),(y),(z)(aa), z(bb)		Refer to commentary in respect of "pension preservation fund" above	Refer to suggestions in respect of "pension preservation fund" above
92	(s-v) Def provident preservation fund (a)(i)(aa)	“or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”;	Does not cater for transfers from a vested pot into a vested pot.	or who elected to transfer the amounts to the savings pot, vested pot or retirement pot of that fund;
93	(x) (cc)	an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—	There is no provision to access the “vested pot”.	an amount from the retirement and vested pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—
94	Paragraph 1(1)(t); definition of “provident preservation fund”	the substitution in paragraph (a) of the definition of “provident preservation fund” for subparagraph (ii)(bb) of the following subparagraph: “(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to this pension preservation fund and who have made this election while they were <u>a</u> members of that other fund or who elected to transfer the amounts to the Savings pot or Retirement pot of that fund;”	“ <i>transferred to this pension preservation fund</i> ” should be “ <i>transferred to this provident preservation fund</i> ”.	Grammatical corrections required as indicated.



Submitted on behalf of ASISA by Rosemary Lightbody

95	1(1)(u)	<p>“the substitution in paragraph (a) of the definition of “provident preservation fund” for subparagraph (v) of the following subparagraph: “(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension <u>provident</u> preservation fund and who have made this election while they were members of that other fund <u>or who have elected to transfer the amounts to the Savings pot or Retirement pot of that fund;</u>”</p>	<p><i>“transferred to this pension preservation fund” should be “transferred to this provident preservation fund”.</i></p> <p>Comment on par 1(1)(c) repeated.</p> <p>Can a member’s Vested pot on resignation from employment be transferred to a preservation fund without the other pots following?</p>	<p>Consider: “(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this provident preservation fund and who have made this election while they were members of that other fund or who have elected to transfer the amounts to the Savings pot <u>and/or</u> Retirement pot of that fund;”.</p>
96	(1)(s) – (v)	<p>(s) by the substitution in paragraph (a) of the definition of “provident preservation fund” for subparagraph (i)(aa) of the following subparagraph: “(aa) resignation, retrenchment or dismissal from employment and who elected to have any lump sum benefit that is payable as a result of the termination transferred to that fund or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”;</p>	<p>The intention behind these proposed amendments is unclear. The “savings pot” and “retirement pot” should only be seen to be notional components of the total member share, which would be encapsulated in the current provisions of the definition of “pension preservation fund”. A member should not be allowed to transfer their “savings pot” to a preservation fund, leaving behind in the transferor fund the “vested pot” and the “retirement pot”.</p>	<p>Deletion of the proposed insertions with a new sub-clause to be inserted to clarify that monies standing to the credit of the “savings pot” the “retirement pot” and the “vested pot” in the transferor fund will be allocated to the corresponding “pots” in the transferee preservation fund.</p>



Submitted on behalf of ASISA by Rosemary Lightbody

		<p>(t) by the substitution in paragraph (a) of the definition of “provident preservation fund” for subparagraph (ii)(bb) of the following subparagraph:</p> <p>“(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to this pension preservation fund and who have made this election while they were members of that other fund or who elected to transfer the amounts to the savings pot or retirement pot of that fund;”;</p> <p>(u) by the substitution in paragraph (a) of the definition of “provident preservation fund” for subparagraph (v) of the following subparagraph:</p> <p>“(v) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension preservation fund and who have made this election while</p>		
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Submitted on behalf of ASISA by Rosemary Lightbody

		<p>they were members of that other fund or who have elected to transfer the amounts to the savings pot or retirement pot of that fund;”;</p> <p>(v) by the substitution in paragraph (b) of the definition of “provident preservation fund” of the following paragraph:</p> <p>“(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in the savings pot or retirement pot or in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund by —;”</p>		
97	1(x)(ii)(bb)	<p>(bb) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(A) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(B) departed from the Republic at the expiry of a visa obtained for the purposes of</p>	<p>The sub-section already refers to a “savings withdrawal benefit” which incorporates the prescribed quantum and time limitations. Is the intention to make provision for entitlement to the whole value of the “savings pot” in the stated circumstances? If so, sub-paragraph 1(x)(ii)(bb) should be amended to “the member share standing to the credit of the savings pot, where a member...”</p> <p>Further is it the intention that different tax tables apply to the “savings pot” and the</p>	



Submitted on behalf of ASISA by Rosemary Lightbody

		(AA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and	“retirement pot” and the “vested pot” where the stated circumstances apply? Should one tax dispensation not apply to the whole member share to be accessed in the instances contemplated?	
98	1(y)	“(iii) a member who has transferred a retirement interest in terms of paragraph 2(1)(c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) of the Second Schedule in respect of that transferred amount, except to the extent that it is an amount contemplated in subparagraph (ii) or the savings pot of that fund; and;”;	Incorrectly framed insertion	Rather include a new proviso - (iii) nothing in this sub-section shall limit the member’s right to claim a savings withdrawal benefit from the fund.
Amendment of definition of “retirement annuity fund”				
99	1(cc)	(cc) by the substitution in paragraph (b) of the proviso to the definition of “retirement annuity fund” for	Retirement interest in retirement annuity may not be transferred to pension preservation fund or provident preservation fund.	Delete “ <i>pension preservation fund, provident preservation fund or a</i> ”



Submitted on behalf of ASISA by Rosemary Lightbody

		<p>subparagraph (ii) of the following subparagraph: “(ii) that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>		
100	(cc)	<p>“(ii) that not more than one-third of the total value of the retirement interest <u>that exists in a vested pot prior to 1 March 2023</u> may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a</p>	<p>As outlined in the definition of 'pension fund above' the current wording '<i>that exists in the vested pot prior to 1 March 2023</i>' seems to specifically exclude fund returns, amounts credited and proportional deductions of the 'Vested pot' after 1 March 2023. As mentioned previously above, ASISA has proposed that a member's interest in each of the three pots be specifically defined in section 1 of the Act. The reference to 'Vested pot interest' in this</p>	<p>(cc) by the substitution in paragraph (b) of the proviso to the definition of “retirement annuity fund” for subparagraph (ii) of the following subparagraph: “(ii) that not more than one-third of the total value of the <u>member's Vested pot [retirement]</u> interest <u>[that exists in a vested pot prior to 1 March 2023]</u> may</p>



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		<p>combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>	<p>instance is therefore recommended in order to simplify the wording</p>	<p>be commuted for a single payment and that the remainder of the vested pot interest together with the retirement pot interest must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value of the vested pot interest and retirement pot interest does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the [retirement] Vested pot interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>
101	1(cc)	<p>(cc) by the substitution in paragraph (b) of the proviso to the definition of “retirement annuity fund” for subparagraph (ii) of the following subparagraph:</p> <p>“(ii) that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a</p>	<p>This proposed definition is seemingly incorrect. The R 165 000 applies to the total monies to be annuitized and not to each of the separate “vested pot” and the “retirement pot” separately. See suggested amendment.</p> <p>Further, the proposed insertion contemplates a transfer of a member’s retirement interest to a preservation fund from the retirement annuity fund. Our assumption is that this is an error as the insertion appears to be cut and pasted from the definition of “pension fund”.</p>	<p>It is proposed that the following amended sub-section be utilized:</p> <p>(ii) that not more than one-third of the total value of the retirement interest that exists in a vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder , <u>calculated together with the total value of the member share standing to the credit of the “retirement pot”</u>, must be paid in the form of an annuity (including a living annuity), a</p>



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		<p>living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>		<p>combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value of the vested pot together with the retirement pot does not exceed R165 000 <u>or where the member is deceased: Provided in determining the value of the retirement interest an amount calculated as follows must not be taken into account:</u></p>
<p>102</p>	<p>(cc) “Retirement annuity” para. (b) subpara. (ii)</p>	<p>“(ii) that not more than one-third of the total value of the retirement interest <u>that exists in a vested pot prior to 1 March 2023</u> may be commuted for a single payment and that the remainder must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund;”</p>	<p>Highlighted section not referenced in the draft as an insertion into the Act.</p> <p>Was the insertion added in error? Please provide clarity.</p>	



Submitted on behalf of ASISA by Rosemary Lightbody

<p>103</p>	<p>Definition of Retirement annuity fund (dd)</p>	<p>(dd) by the substitution in paragraph (b) of the proviso to the definition of “retirement annuity fund” for subparagraph (x)(dd) of the following subparagraph: “(dd) the payment of— (A) a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member— (AA) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes on exchange control in respect of applications for that recognition received or on before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of the currency on or before 28 February 2022; or (BB) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or (CC) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of</p>	<p>Same comments as applicable to “cease to be a resident” above</p> <p>Same comments as relate to pension fund as follows: The legislation needs to be simplified. The term “retirement interest” includes the full fund value. Therefore it should be considered what is excluded from annuitization and deal with that in this paragraph only. There is duplication in the definitions of retirement pot and vested pot. In (dd), 1/3 of the retirement interest must be commuted for a lump sum and 2/3 taken as an annuity. The retirement interest includes all pots. What needs to be excluded is:</p> <ol style="list-style-type: none"> 1. All vested rights of provident fund members and growth; 2. 2/3 of age 55+ members’ contributions post 1 March 2021 3. the “savings pot”; 4. the emigration benefit. <p>It is not necessary to include this again in the vesting pot and retirement pot definitions.</p>	
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Submitted on behalf of ASISA by Rosemary Lightbody

		<p>“visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; [and]</p> <p>(B) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p> <p>(C) an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</p>		
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Submitted on behalf of ASISA by Rosemary Lightbody

		<p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of</p> <p>(AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act;”;</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of</p>		
104	(dd) Def of RA (C)	an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—	There is no provision to access the “vested pot”.	an amount from the retirement <u>and vested pot</u> , deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—



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105	1(1)(z)(dd)	<p>(dd) by the substitution in paragraph (b) of the proviso to the definition of “retirement annuity fund” for subparagraph (x)(dd) of the following subparagraph:</p> <p>“(dd) the payment of— (A) a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member— (AA) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes on exchange control in respect of applications for that recognition received or on before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of the currency on or before 28 February 2022; or (BB) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or (CC) departed from the Republic at the expiry of a visa obtained for the purposes of</p>	<p>No reference is made in sub-paragraph (B) in (dd) to formal emigration prior to 1 March 2022 here. There is no reason why a taxpayer who has already emigrated should have to wait any time to be able to access their Savings pot (or any other pot) in a pension fund. Sub-paragraphs (B) and (C) below must be supplemented with a reference to emigration. This would be particularly problematic for taxpayers who emigrated with effect from 1 March 2022 (for instance) but who would now be required to wait until 1 March 2025 under the current provisions.</p> <p>In addition, it appears that the member's savings withdrawal benefit is taxed at the member's marginal tax rates when the member exists early e.g. due to cessation of residence. It is argued that the benefit payable in this instance should be deemed to be a lump sum benefit so that the Savings withdrawal benefit, the benefit taken from the Retirement pot as well as the benefit taken from the Vest pot will all be taxed under the same regime i.e. as lump sum benefits and in particular, 'retirement fund lump sum WITHDRAWAL benefits'. In addition, there is further support for this contention in the definition of 'retirement annuity' in sub-paragraph (x)(cc) of the definition of 'retirement annuity' which allows a member to access the full benefit in</p>	<p>The following changes are recommended:</p> <p>(dd) by the substitution in paragraph (b) of the proviso to the definition of “retirement annuity fund” for subparagraph (x)(dd) of the following subparagraph:</p> <p>“(dd) the payment of— (A) a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member— (AA) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes on exchange control in respect of applications for that recognition received or on before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of the currency on or before 28 February 2022; or (BB) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p>
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Submitted on behalf of ASISA by Rosemary Lightbody

		<p>(AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; [and]</p> <p>(B) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued</p>	<p>the fund as a lump sum benefit in terms of paragraph 2(1)(b)(ii) of the Second Schedule if the entire benefit (including the portion of the member's benefit in the Savings pot) falls below R15,000. In that instance the member's portion in the Savings pot is taxed as a 'retirement fund lump sum WITHDRAWAL benefit' and not a 'savings withdrawal benefit'. Exiting the fund due to cessation of residence etc should be treated the same.</p> <p>In order to further entrench the fact that an exit should come from all three pots, specific reference to the 'Vested pot' has also been included.</p>	<p>(CC) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; [and]</p> <p>(B) an amount from the savings pot [paid] <u>deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule [as a savings withdrawal benefit contemplated in section 1]</u>, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the</p>
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Submitted on behalf of ASISA by Rosemary Lightbody

		<p>in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and (C) an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member— (AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or (BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act;”;</p>		<p>Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; or <u>(CC) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022;</u> and (C) an amount from the retirement pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member— (AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p>
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Submitted on behalf of ASISA by Rosemary Lightbody

			<p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or (BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act;” or <u>(CC) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022;</u> <u>D) an amount from the vested pot, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</u></p>
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Submitted on behalf of ASISA by Rosemary Lightbody

				<p><u>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</u> <u>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of</u> <u>(AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</u> <u>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act;</u> <u>(CC) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022;</u></p>
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Submitted on behalf of ASISA by Rosemary Lightbody

106	1(dd)(B)	<p>(B) an amount from the savings pot paid as a savings withdrawal benefit contemplated in section 1, where a member—</p> <p>(AA) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of (AAA) working as contemplated in paragraph (ii) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</p> <p>(BBB) a visit as contemplated in paragraph (b) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act no. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of the Act by the Director General, as defined in that Act; and</p>	<p>The sub-section already refers to a “savings withdrawal benefit” which incorporates the prescribed quantum and time limitations. Is the intention to make provision for entitlement to the whole value of the “savings pot” in the instances contemplated? If so, sub-paragraph 1(dd)(B) should be amended to “the member share standing to the credit of the savings pot, where a member...”</p> <p>Further is it the intention that different tax tables apply to the “savings pot” and the “retirement pot” and the “vested pot” where the stated circumstances apply? Should one tax dispensation not apply to the whole member share to be accessed in the instances contemplated?</p>	
107	Paragraph (ee)	<p>by the addition to the definition of “retirement annuity fund” of the following further proviso: “Provided further that the Commissioner may approve a fund in respect of any year of assessment, if the Commissioner is satisfied that the rules of the fund provide for the</p>	<p>Needs to go further and state that transfers between funds will be allocated to similar pots in each fund.</p>	



Submitted on behalf of ASISA by Rosemary Lightbody

		creation of the “savings pot”, “retirement pot” and “vested pot” as defined in section 1;”		
108	None at present	<p>Proviso to (b) (ii) of the definition of 'retirement annuity'</p> <p>Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account-</p>	<p>As ASISA proposes that as the member's interest in the Vested pot is to be defined (i.e. vested pot interest), that the proviso be amended to include a reference to it.</p>	<p>Proviso to (b) (ii) of the definition of 'retirement annuity'</p> <p>Provided that in determining the value of the <u>Vested pot [retirement]</u> interest an amount calculated as follows must not be taken into account-</p>
109	None at present	<p>"retirement interest" means a member's share of the value of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as determined in terms of the rules of the fund on the date on which he or she elects to retire or transfer to a pension preservation fund, provident preservation fund or retirement annuity.</p>	<p>The proposed amendments to the definitions of pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund still refer to 'retirement interest' without specifying what portion of the member's retirement interest is being referred to. In addition, the current definition only refers to an election to retire or transfer to specific funds. There is no reason why only those transactions need to be specified.</p> <p>ASISA proposes the amendment of the definition of 'retirement interest' in section 1 of the Act as indicated.</p>	<p>"retirement interest" means a member's share of the value of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as determined in terms of the rules of the fund, <u>comprising the member's 'Savings pot interest', 'Retirement pot interest' and 'Vested pot interest'</u>. [on the date on which he or she elects to retire or transfer to a pension preservation fund, provident preservation fund or retirement annuity].</p>



Submitted on behalf of ASISA by Rosemary Lightbody

Definition of “Total retirement contribution”				
110	1(1)(ff)	(ff) by the insertion after the definition of “this Act” of the following definition: “Total retirement contribution” means any amount contributed to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund by the person that is a member of that fund on or after 1 March 2023;”;	Amount should exclude risk cover and other charges, so that it includes only the net amount allocated to retirement savings.	
111	1(1)(ff)		The term “Total retirement contribution” should also include contributions made by the employer of that member. In addition, as it is only meant to apply to contributions made in respect of the two-pot system. The contributions to the fund (and not the member's membership in the fund) should be those made on or after 1 March 2023. The current wording could allow contributions made by a member of a fund PRIOR to 1 March 2023 to be included, provided the member was a member on 1 March 2023. This is surely not the intention of this definition.	“ Total retirement contribution ’ means any amount contributed to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund <u>on or after 1 March 2023</u> by [the] a person that is a member of that fund <u>or any other person on behalf of that member</u> [on or after 1 March 2023] ;
112	1(1)(ff)	means any amount contributed to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund by the person	Does this include risk cover and charges or only the net amount allocated to retirement savings	



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		that is a member of that fund on or after 1 March 2023;” and		
	Definition of “Vested Pot”			
113	1(1)(gg)	<p>“Vested pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that:</p> <p>(a) the total value in this pot consists of the value in the fund that exists immediately prior to 1 March 2023;</p> <p>(b) the total value in this pot must be paid in accordance with the rules of the fund that exists immediately prior to 1 March 2023: Provided that in determining the value of this pot, the following amount must be taken into account—</p> <p>(i) any amount credited to the member’s individual account or minimum individual reserve of the provident fund on or after 1 March 2023; and</p> <p>(ii) any fund return, as defined in the Pension Funds Act, in relation to</p>	<p>The meaning behind the provisos in sub-paragraph (b) is unclear. The majority of the content of sub-sections (i) and (ii) is already contemplated in sub-section (b) (prior to the proviso), and reference to “or after 1 March 2023” in sub-section (i) is contradictory to that provided for in sub-paragraph (b) (prior to the proviso).</p>	



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		amounts credited contemplated in subparagraph (i)".		
114	1(1)(gg)	(c) no contributions may be made to this pot on or after 1 March 2023, except in the case of a person who was a member of a provident fund and who was 55 years of age or older on 1 March 2021; and	As stated above, with reference to the definition of "retirement pot", it is unclear whether a person who was a member of a provident fund and who was 55 on 1 March 2021, will only have a "savings pot" and a "vested pot" if contributions to the "vested pot" may continue. This needs to be clarified for the purposes of this definition and for the purposes of the definition of "retirement pot".	
115	1(1)(gg)	d) the member may, in accordance with the rules of the fund that exists immediately prior to 1 March 2023, elect to transfer the value of this pot into the member's vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;"	The intention behind these proposed amendments is unclear. As stated above, the "savings pot"; the "vested pot"; and the "retirement pot" should only be seen to be notional components of the member's total share of fund. A member should not be allowed to transfer their "vested pot" to a preservation fund, leaving behind in the transferor fund the "savings pot" and the "retirement pot".	
116	1(1)(gg)	"(d) the member may, in accordance with the rules of the fund that exists immediately prior to 1 March 2023, elect to transfer the value of this pot into the member's vested pot of another pension fund, pension preservation fund, provident fund,	Does this section allow transfer of vested pot to any fund to which someone is an existing member already? Furthermore, is the reference to "in accordance with the rules of the fund that exists immediately prior to 1 March 2023" referencing the rules of the Pension/Provident	Clarity required to state that retirement pots may only be transferred to the respective fund type retirement pot. E.g. Retirement pot in a pension fund may only be transferred to a retirement pot of another pension fund, pension



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		<p>provident preservation fund or retirement annuity fund;”.</p>	<p>Preservation fund rules, or the rules for Pension/Provident Preservation funds as per the Income Tax Act?</p> <p>Certain retirement funds may not have updated their fund rules to specifically exclude transfers from an RA, as the requirements in terms of the Act made specific reference to this limitation.</p> <p>The rules for retirement funds in terms of the Act are not prescriptive in determining whether a member may transfer from a Pension/Provident fund to an Retirement Annuity and some retirement funds may not have this prescribed this in their fund rules. Therefore the intention of this transfer is not clear and clarity should be provided.</p>	<p>preservation fund <u>or retirement annuity</u> fund. OR that a retirement pot in an RA may not be transferred to a retirement pot in a Pension/Provident/Pres fund.</p>
117	Vested Pot	<p>““Vested pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that:</p> <p>(a) the total value in this pot consists of the value in the fund that exists immediately prior to 1 March 2023;</p> <p>(b) the total value in this pot must be paid in accordance with the rules of</p>	<p>The vested pot should also include pre 1 March 2023 transfers into a pension, provident, preservation and RA funds from a provident fund of members who were members of a provident fund on 1 March 2021 (T day) plus growth.</p> <p>(d) This should state that 2/3 goes into the vested pot. 1/3 should go into the savings pot.</p> <p>(e) The member does not elect that it goes to the vested pot of the transferee fund. The</p>	



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		<p>the fund that exists immediately prior to 1 March 2023: Provided that in determining the value of this pot, the following amount must be taken into account—</p> <p>(i) any amount credited to the member’s individual account or minimum individual reserve of the provident fund on or after 1 March 2023; and</p> <p>(ii) any fund return, as defined in the Pension Funds Act, in relation to amounts credited contemplated in subparagraph (i).”.</p> <p>(c) no contributions may be made to this pot on or after 1 March 2023, except in the case of a person who was a member of a provident fund and who was 55 years of age or older on 1 March 2021; and</p> <p>(d) the member may, in accordance with the rules of the fund that exists immediately prior to 1 March 2023, elect to transfer the value of this pot into the member’s vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;”.</p>	<p>member elects transfer of the full amount and the fund allocates it.</p> <p>(c)This states that the rules of the fund that existed prior to 1 March 2023 govern the vested pot. Therefore withdrawals are subject to the lump sum withdrawal table and retrenchments from the vested pot are taxed in accordance with the R500k table with aggregation.</p> <p>Provident fund VESTED BENEFITS are available in cash on retirement.</p>	
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<p>118</p>	<p>1(1)(gg)</p>	<p>(gg) by the insertion after the definition of “Value-Added Tax Act” of the following definition:</p> <p>““Vested pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that:</p> <p>(a) the total value in this pot consists of the value in the fund that exists immediately prior to 1 March 2023;</p> <p>(b) the total value in this pot must be paid in accordance with the rules of the fund that exists immediately prior to 1 March 2023:</p> <p>Provided that in determining the value of this pot, the following amount must be taken into account—</p> <p>(i) any amount credited to the member’s individual account or minimum individual reserve of the provident fund on or after 1 March 2023; and</p>	<p>While the current definition of 'Vested pot' makes provision for fund returns and amounts credited to the Vested pot after 1 March 2023, it does not make provision for Section 37D withdrawals and divorce orders from this fund. It is suggested that the determination of the member's interest in this pot (i.e. the member's “Vested pot <u>interest</u>”) should be specifically defined - see proposed definition above. The definition above makes reference to the fact that such deductions should be made proportionately from the Savings pot, Retirement pot as well as the 'Vested pot'. Wording needs to be included to that effect in a definition of "Vested pot interest". In addition, paragraph (b)(i) refers only to a provident fund as opposed to the 'fund'</p>	<p>Recommended changes:</p> <p>“Vested pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that:</p> <p>(a) the total value in this pot consists of <u>the member's Retirement pot interest in this pot</u> [value in the fund that exists immediately prior to 1 March 2023];</p> <p>(b) the total value in this pot <u>is subject to, and</u> must be paid in accordance with the rules of the fund that exist[s] immediately prior to 1 March 2023:</p> <p>Provided that in determining the value of this pot [the following amount must be taken into account—</p> <p>(i) any amount credited to the member’s individual account or minimum individual reserve of the provident fund on or after 1 March 2023; and</p> <p>(ii) any fund return, as defined in the Pension Funds Act, in relation to amounts credited contemplated in subparagraph (i).”]</p>
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		<p>(ii) any fund return, as defined in the Pension Funds Act, in relation to amounts credited contemplated in subparagraph (i).”</p> <p>(c) no contributions may be made to this pot on or after 1 March 2023, except in the case of a person who was a member of a provident fund and who was 55 years of age or older on 1 March 2021; and</p> <p>(d) the member may, in accordance with the rules of the fund that exists immediately prior to 1 March 2023, elect to transfer the value of this pot into the member’s vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;”.</p>		<p>[(c)] (i) no contributions may be made to this pot on or after 1 March 2023, except in the case of a person who was a member of a provident fund and who was 55 years of age or older on 1 March 2021; and</p> <p>[(d)] (ii) the member may, in accordance with the rules of the fund that exist[s] immediately prior to 1 March 2023, elect to transfer the value of this pot into the member’s Vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;”.</p>
119	1(1)(gg)	Subpar (a)-(c) of the definition of “vested pot”	<ul style="list-style-type: none"> • See comments on the proviso to subpar (b) below – we suggest that (a) provide for fund return as well. • We are happy with the phrase “the total value in this pot must be paid in accordance with the rules of the fund that exist immediately prior to... (the effective date) but the proviso in (i) incorrectly provides for credits “on or after 1 March 2023” and 	<ul style="list-style-type: none"> • We suggest that (a) provides for fund return as well. • We therefore suggest that the whole of the proviso to (b) of the definition is deleted.



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			<p>item (ii) of the proviso only allocates fund returns to amounts described in item (i).</p> <ul style="list-style-type: none"> Subpar (c) appears to indicate that provident fund members who were over 55 as at the 1st March 2021 may not allocate their on-going contributions to a “savings pot”. 	<ul style="list-style-type: none"> We assume that this was not the intention and suggest amending (c) of the definition to make it clear that, in respect of provident fund members who were over 55 as at the 1st March 2021, 1/3rd of their on-going contributions (i.e. from the effective date of the “Two-Pot proposals) will be allocated their “savings pot” and the remaining 2/3rds will be allocated to the provident fund component of their “vested pot”.
120	1(1)(gg);	<p>“Vested pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that: (a) the total value in this pot consists of the value in the fund that exists immediately prior to 1 March 2023;”</p>	<p>It is unclear what happens to the non-vested fund credit in terms of T-day. Our understanding is that this should remain post 1 March 2023.</p> <p>We would presume that the intention is not that the value of the Vested pot must remain constant, and that the intention is instead that allowance should be made for the growth in the Vested pot while the applicable charges are still being levied.</p> <p>It is stipulated in the definitions of “Savings pot” and “Retirement pot” that the following does not form part of these pots:</p>	<p>Clarify what is to become of the non-vested fund credit in terms of T-day.</p> <p>Adjust the clause as follows: “Vested pot” means a pot established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for a person who is a member of that fund, provided that the rules of the fund provide that: (a) the total value in this pot consists of the value in the fund that exists</p>



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			<p><i>“any amount contributed ... relating to the period prior to 1 March 2023”</i></p> <p>The above would seem to indicate that contributions payable before 1 March 2023, but paid after 1 March 2023, do not form part of the Savings pot or Retirement pot, and as such fall into the Vested pot. It is however, stipulated in the definition of “Vested pot” that <i>“the total value in this pot consists of the value in the fund that exists immediately prior to 1 March 2023”</i> and that <i>“no contributions may be made to this pot on or after 1 March 2023, except in the case of a person who was a member of a provident fund and who was 55 years of age or older on 1 March 2021”</i>.</p> <p>The above provisions in the definition of “Vested pot” seem to suggest that no contributions may be made to the Vested pot after 1 March 2023, including contributions that became payable before 1 March 2023. There is accordingly a contradiction between the definition of “Vested pot” and the definitions of “Savings pot” and “Retirement pot” in this regard.</p>	<p>immediately prior to 1 March 2023 <u>together with growth thereafter;</u></p> <p>This should be clarified.</p> <p>It is submitted that the proposed alternate suggestion of including a definition of 'vested pot interest' should assist in clarifying the composition of that pot- see item 126 below</p>
121	1(1)(gg)(b)	<p>“the total value in this pot must be paid in accordance with the rules of the fund that exists immediately prior to 1 March 2023”</p>	<p>We understand this phrase to mean that a member will still be able to take his T-day VESTED BENEFIT in cash. If this is correct, this would appear to be contrary to the following</p>	<p>This should be clarified.</p>



Submitted on behalf of ASISA by Rosemary Lightbody

			<p>provision which will be inserted in the various retirement fund definitions above: <i>“that not more than one-third of the total value of the retirement interest that exists in a Vested pot prior to 1 March 2023 may be commuted for a single payment and that the remainder must be paid in the form of an annuity”.</i></p>	
122	1(1)(gg)(b)	<p>“Provided that in determining the value of this pot, the following amount must be taken into account— (i) any amount credited to the member’s individual account or minimum individual reserve of the provident fund on or after 1 March 2023;”</p>	<p>Does this mean that any credit to a member’s individual account after 1 March 2023, including a disability benefit, will form part of the Vested pot? Please see covering letter to which this detailed comment is attached. Why is reference made to a provident fund only?</p>	
123	1(1)(gg)(c)	<p>(c) no contributions may be made to this pot on or after 1 March 2023, except in the case of a person who was a member of a provident fund and who was 55 years of age or older on 1 March 2021; and</p>	<p>It should be clarified that this only applies if the member remains a member of the provident fund of which he/she was a member on 1 March 2021.</p> <p>Does such a member have a choice whether contributions after 1 March 2023 go into this pot? Can a member opt for these contributions to rather go into the Savings and Retirement pots? If not, it would mean that the member cannot access part of his fund credit via the Savings pot whilst employed. This should be clarified.</p>	<p>Consider: <i>(c) no contributions may be made to this pot on or after 1 March 2023, 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; and</i></p>



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124	1(1)(gg)(d)	“the member may, in accordance with the rules of the fund that exists immediately prior to 1 March 2023, elect to transfer the value of this pot into the member’s Vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;”	It is stated in the Draft Explanatory Memorandum to the Draft Revenue Laws Amendment Bill that “ <i>transfers can be made into the “Retirement pot” tax free from any other pot</i> ”. Paragraph (d) of the definition of “Vested pot” does, however, not make provision for a transfer to the Retirement pot.	Paragraph (d) of the definition of “Vested pot” should be amended to also make provision for a transfer to the Retirement pot.
125	1(1)(gg)(d)		No reference to being permitted to transfer benefits in vested pot to retirement pot.	
126	None at present	There is no definition of the interest that a member has in his/her "Vested pot".	ASISA recommends that a member's interest in the "Vested pot" be defined. There should consequently be a definition of ' Vested pot interest '. The definition of Vested pot interest should take into consideration amounts credited to that pot, fund returns and reductions of the pot proportionally in relation to the member's Savings pot interest and Retirement pot interest.	A member's interest in the Vested pot should be specifically defined in Section 1 of the ITA. <u>'Vested pot interest' includes:</u> <u>(a) the value of the member's interest in the fund that exists immediately prior to 1 March 2023";</u> <u>(b) with the addition of any other amount credited to the member’s "Vested pot" on or after 1 March 2023, and</u> <u>(c) any fund return, as defined in the Pension Funds Act, in relation to the amounts contemplated in sub-item (a) or amounts credited contemplated in subitem (b),</u>



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				<p><u>reduced proportionally with respect to a member's Savings pot interest and Retirement pot interest respectively, by an amount permitted in terms of the Pension Funds Act to be deducted from the Vested pot on or after 1 March 2023, and</u></p> <p><u>(d) any reduction of the Vested pot above will be apportioned in the Vested pot in accordance with and subject to the rules of the fund immediately after 1 March 2023.</u></p>
Amendment to section 10C				
127	Paragraph 2(1) Section 10C	Section 10C of the Income Tax Act, 1962, is hereby amended by the addition in subsection (1) of the definition of “qualifying annuity” after paragraph (e) of the following paragraphs: “(f) as contemplated in paragraph (ii) of the further proviso to the definition of ‘pension fund’ in section 1(1); (g) as contemplated in paragraph (c) of the definition of ‘retirement pot’ in section 1(1); or (h) as contemplated in paragraph (ii) of the further proviso to the	It is not necessary to amend to reflect the retirement pot, It is irrelevant which pot the annuity is paid from as long as an after tax contribution has been made to any fund which can be set off against annuity income. Item (g) of the proviso (viz referencing the “retirement pot”) is not required as the reference to the annuitisation amount in the various definition suffices.	We suggest deleting item (g) to the proviso of the definition.



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		definition of ‘provident fund’ in section 1(1).”.		
128	Paragraph 2(1) s10C		We note that there is only a reference to the “Retirement pot”. Does it not exclude a pension bought from the “Vested pot”? There is more than one ‘further proviso’ in the definition of “pension fund”. It should therefore be clarified which “further proviso” is referred to.	Consider adding reference to “Vested pot”.
Amendment to Paragraph 2 (1) of the Second Schedule and addition of par 6B				
129	3(1)	<p>3. (1) Paragraph 2 (1) of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the addition after item (c) of the following item: “(d) any amount transferred for the benefit of that person, less any deductions permitted under the provisions of paragraph 6B.”.</p> <p>“6B. The deduction to be allowed from an amount contemplated in paragraph 2(1)(d) is equal to so much of that amount as is transferred for the benefit of a person from the — (a) savings pot into the member’s retirement pot in that fund or into the member’s savings pot or</p>	The intention behind these proposed amendments is unclear. As stated above, the “savings pot”; the “vested pot”; and the “retirement pot” should only be seen to be notional components of the total member share. A member should not be allowed to transfer their “vested pot” / “savings pot” / “retirement pot” to a preservation fund, leaving behind in the transferor fund member share standing to the credit of the other pots.	



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		<p>member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</p> <p><i>(b)</i> retirement pot into the member’s retirement pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and</p> <p><i>(c)</i> vested pot into the member’s vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”.</p>		
130	<p>3(1) Transfer between the pots of the two pot retirement system: Deductions - 6B</p>	<p>The deduction to be allowed from an amount contemplated in paragraph 2(1)(d) is equal to so much of that amount as is transferred for the benefit of a person from the —</p> <p><i>(a)</i> savings pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</p> <p><i>(b)</i> retirement pot into the member’s retirement pot of another pension</p>	<p>Paragraph 6B is unnecessary. There should not be a transfer from like pot to like pot within the same fund- there should only be, for instance, a re-allocation from the savings pot to the retirement pot in that same fund. This is simply a reallocation within the fund. The transfer is between funds/entities. There should be an over-arching blanket provision which states that transfers to another approved fund will follow the same pot in the new fund as the default position. In the new fund the member can elect to allocate the savings pot to the retirement pot. However, the probability of this happening before retirement is unlikely. Only at retirement might</p>	



Submitted on behalf of ASISA by Rosemary Lightbody

		fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and (c) vested pot into the member’s vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”.	the member transfer to the retirement pot in order to annuitize instead of taking the retirement pot in cash. There should be no deduction on transfer of the savings pot to the retirement pot of the same fund as there is no accrual to the member so no deduction is required.	
131	3(1)		All conceivable inter-fund benefit transfers (i.e. across different funds) are catered for in either para 2(1)(b)(iB) or para 2(1)(c) of the Second Schedule and therefore an additional para 2(1)(d) to cater for transfers is not necessary.	We suggest deleting para 2(1)(d) and repositioning the further requirements contained in para 6B as further requirements that must be adhered to in order for any para 2(1)(b)(iB) or para 2(1)(c) transfer to be tax-free. Also, it is not appropriate for the Second Schedule to provide for intra-fund transfers (i.e. within the same fund) which, if they are permitted, do not comprise an accrual in terms of the Second Schedule. Thus we suggest omitting any reference to intra-fund transfers from para 6B to the Second Schedule. The permitted and precluded intra-fund transfers between the various pots should be provided for in the various definitions of approved funds.
132	3(1)	3. (1) Paragraph 2 (1) of the Second Schedule to the Income Tax Act,	Sub-paragraph (d) could refer to any amount transferred. As paragraph 6B is specifically	3. (1) Paragraph 2 (1) of the Second Schedule to the Income Tax Act, 1962,

ASISA COMMENT ON 2022 DRAFT REVENUE LAWS AMENDMENT BILL: TWO-POT SYSTEM

29 August 2022 – Annexure to letter of same date



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		1962, is hereby amended by the addition after item (c) of the following item: “(d) any amount transferred for the benefit of that person, less any deductions permitted under the provisions of paragraph 6B.”.	applicable to transfers of amounts to and from the Savings pot and the Retirement pot, it is recommended that sub-paragraph (d) should specifically reference such transfers.	is hereby amended by the addition after item (c) of the following item: “(d) any amount <u>from the Savings pot or the Retirement pot</u> transferred for the benefit of that person, less any deductions permitted under the provisions of paragraph 6B”.
133	4(1) Par 6B	“The deduction to be allowed from an amount contemplated in paragraph 2(1)(d) is equal to so much of that amount as is transferred for the benefit of a person from the — (c) Vested pot into the member’s Vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”	It is stated in the Draft Explanatory Memorandum to the Draft Revenue Laws Amendment Bill that “ <i>transfers can be made into the “Retirement pot” tax free from any other pot</i> ”. However, paragraph 6B(c) does not make provision for a transfer from the Vested pot to the Retirement pot.	Paragraph 6B(c) should be amended to also make provision for a transfer from the Vested pot to the Retirement pot.
134	4(1) Par 6B	“ 6B. The deduction to be allowed from an amount contemplated in paragraph 2(1)(d) is equal to so much of that amount as is transferred for the benefit of a person from the — (a) savings pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;		Include transfers from vested pot to retirement pot.



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		<p>(b) retirement pot into the member’s retirement pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and</p> <p>(c) vested pot into the member’s vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”.</p>		
135	4(1) 6B	<p>6B. The deduction to be allowed from an amount contemplated in paragraph 2(1)(d) is equal to so much of that amount as is transferred for the benefit of a person from the —</p> <p>(a) savings pot into the member’s retirement pot in that fund or into the member’s savings pot or member’s retirement pot in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</p> <p>(b) retirement pot into the member’s retirement pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and</p>	<p>Paragraph E dealing with Transfers at the bottom of page 6 of the Explanatory Memorandum says:</p> <p><i>Individuals cannot transfer amounts out of the “retirement pot”, but can only transfer to another “retirement pot” tax free. <u>Transfers can be made into the “retirement pot” tax free from any other pot.</u> No transfers can be made into the “savings pot”, unless they are from another “savings pot” and subject to fund rules.</i></p> <p>But current drafting doesn’t appear to cover:</p> <ul style="list-style-type: none"> • Vested pot transferred to same fund’s Retirement pot, or • Vested pot transferred to another fund’s Retirement pot. 	<p><u>(d) vested pot into the member’s retirement pot in that fund or into the member’s retirement pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.</u></p>



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		(c) vested pot into the member’s vested pot of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”		
136	4 (1) 6B	None currently	<p>The second Paragraph in E dealing with Transfers at the bottom of page 6 of the Explanatory Memorandum says:</p> <p>It is proposed that “retirement pots” and “savings pots” <u>cannot be split between funds</u> (i.e. you cannot transfer a “savings pot” to another provider without also transferring the relevant “retirement pot” to that same provider). Given that a member could opt that 0% of the contribution flows to the “savings pot”, the practical result is that a member may well only have a positive balance in the “retirement pot”. Therefore, a “retirement pot” could conceivably be a stand-alone pot, but an “savings pot” cannot stand alone from a “retirement pot”, or be located at a different provider. Amendments detailing the permissible and non-permissible transfers will be outlined in the new paragraph 6B of the Second Schedule to the Act.”</p> <p>Are the above restrictions on splitting missing from the draft legislation?</p>	If these restrictions are missing, then relevant wording to be added to the Bill.



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	GENERAL			
137		Para 5 and 6 of the Second Schedule of the Income Tax Act	Withdrawals from the savings pot (i.e. savings withdrawal benefits) will be taxed at the members marginal rate of tax (as opposed to the Withdrawal tax table). Tax at retirement (and withdrawal) is accumulative which results in tax benefits deemed to being used.	Withdrawals from the savings pot (i.e. savings withdrawal benefits) taxed at marginal rate should not be taken into consideration the next time a member accesses a retirement fund lumpsum (accumulation principle should not apply).
138			Reference to “employee”	Refer to “member”, and not to “employees” throughout
139			Excess contributions	Will these still be deducted from lump sums withdrawn / at retirement, before apply tax tables? Or will only a 10C exemption be allowed? What about excess contributions contributed before effective date? See the comments and recommendations in item 7 above