20 September 2022

Draft Response Document on the 2022 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill and 2022 Draft Revenue Laws Amendment Bill.

**(Based on hearings by the Standing Committee on Finance in Parliament on 13 September 2022)**

 

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1. BACKGROUND
   1. PROCESS AND PUBLIC COMMENTS

The 2022 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Draft Rates Bill) was first published on the same day as the Budget (23 February 2022) and gives effect to changes in rates and monetary thresholds to the personal income tax tables and increases of excise duties on alcohol and tobacco. It also contains changes tabled by the Minister in Parliament on 31 March 2022 and 31 May 2022 regarding temporary relief on the fuel levy as well as the postponement of the effective date of an increase in the health promotion levy. The 2022 Draft Rates Bill was published for the second time on 29 July 2022 to solicit public comments.

The 2022 Draft Revenue Laws Amendment Bill was published for public comment on 29 July 2022 and contains proposed amendments to the Income Tax Act, 1962 (Act No 58 of 1962), dealing with the two-pot retirement system. The proposed amendments give effect to the previous announcements made by the Minister in the February 2021 Budget Speech and November 2021 Medium Term Budget Policy Statement (MTBPS) Speech. These amendments also follow a discussion document published by National Treasury for public comment on 15 December 2021, titled “*Encouraging South African Households to save more for retirement*”. Following the Budget announcement on 23 February 2022, National Treasury held public consultations with selected stakeholders to discuss the proposed two-pot retirement system.

The closing date for all public comments on the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill was 29 August 2022. National Treasury and SARS received written comments from 27 organisations and 80 individuals (list of commentators attached as Annexure A).

The National Treasury briefed the Standing Committee on Finance (SCoF) on the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill on 23 August 2022. Workshops with stakeholders to discuss their written comments on the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill were held on 8 and 12 September 2022 respectively. Subsequently, oral presentations by taxpayers and tax advisors on the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill were made at hearings held by the SCoF on 13 September 2022.

Today, on 20 September 2022, National Treasury presents to the SCoF the Draft Response Document on the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill. The 2022 Draft Response Document contains a summary of draft responses from National Treasury and SARS officials to the public comments received and proposed steps to be taken in addressing the key issues raised during the consultation process.

Once the responses are considered by SCoF, they will be presented to the Minister for approval, including to approve consequential amendments to the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill, prior to the formal tabling by the Minister in Parliament.

* 1. POLICY ISSUES AND RESPONSES

Provided below are the responses to the key issues raised by the public in respect of the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill in the form of written submissions and during the public hearings. These comments will be taken into account in finalising the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill to be tabled. Comments that are outside the scope of the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill are not taken into account for purposes of this response document.

* 1. SUMMARY

This response document includes a summary of all the written comments received on the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill published for public comment on 29 July 2022, as well as a summary of all the written and oral presentations made during public hearings on the 2022 Draft Rates Bill and 2022 Draft Revenue Laws Amendment Bill held by the SCoF on 13 September 2022.

**2022 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill**

1. CUSTOMS AND EXCISE ACT: INCREASE IN THE EXCISE DUTY ON ALCOHOL AND TOBACCO
   1. General increase in the excise duty on alcohol and tobacco by between 4.5 and 6.5 per cent

(Main reference: Schedule No 1 to the Customs and Excise Act, 1964: clause 5 of the Draft Rates Bill)

Government has a guideline to direct excise duty policy where duty should be 11, 23 and 36 per cent of weighted average retail price for wine, beer and spirits and 40 per cent of price of most popular brand for cigarettes. In 2022, Government proposes excise duty changes of between 4.5 per cent (inflation) and 6.5 per cent.

*Comment:* During the 2021 Budget, the Minister of Finance announced a review of the excise alcohol policy. This year, it was confirmed that the “review papers on the alcohol and tobacco excise duties policy framework will be released shortly for comment”. The industry has to date not received any feedback from National Treasury on the status of the review or when the discussion document will be released for public comment. We are concerned that we are 6 months into the 2022/23 excise cycle and policy discussions by their very nature could have long term implications for our sector and for the consultations with industry to be meaningful we would require a transparent process with clear timelines.

*Response:* Noted. National Treasury is busy finalising the alcohol review paper and once completed, all the stakeholders will be informed and a consultative process initiated. There has been a number of developments in the alcohol industry, the regulatory framework and the excise policy framework need to keep up with all these developments.Any structural changes to the excise policy framework will first be consulted with all stakeholders before implementation.

*Comment:* There are many reasons why people drink alcohol and none of the consumption reasons relate to the cost or affordability of alcohol. Thus, leveraging pricing policies is unlikely to address irresponsible drinking as it is not addressing the underlying drivers alcohol consumption. Targeted policies or interventions that address the specific drivers are more likely to have a lasting impact than disproportionate polices that erode overall value to society.

*Response:* Partially accepted. The problems related to alcohol consumption and abuse require a comprehensive package of tax and non-tax measures to address them effectively. However, excise policy is a cost effective, key component of these package of measures as consumers do change their spending behaviour based on prices. But a lot more still needs to be done on non-tax measures to address the problem of excessive alcohol consumption. The World Health Organisation (WHO) has identified some of the alcohol policy “best-buys”, which include increasing alcohol beverage excise taxes, enacting and enforcing bans or comprehensive restrictions on exposure to alcohol advertising (across multiple types of media), and enacting and enforcing restrictions on the physical availability of retailed alcohol (via reduced hours of sale), amongst others.

*Comment:* A reflection on the tax incidence over the past six years and its compounding impact has shown a cumulative deviation of 17,03% (marginally down from 2021). This is a deviation from the Governments Tax Policy. There are significant impacts of excise duty increases on the value chain which is ultimately absorbed by the consumer at nearly double the intended excise duty rate. Given the relevant considerations, a rise in excise duties should ideally be in line with or below the inflation rate.

*Response:* Noted. The alcohol tax regime applies a specific excise duty rate which is the same throughout the supply chain. The application of Duty at Source (DAS) is cost effective for the administration of the excise duty regime. Unfortunately, SARS (or National Treasury) cannot prescribe how the pricing mechanisms should work in the industry supply chain. The implementation of excise duties on alcoholic products is done with consumers in mind – only price increases that are felt by the consumer will reduce consumption.

*Comment:* A commitment by Government to maintain a stable excise policy over the following five years would be complimentary to the intent by Government and a clear indication to investors of Government’s deliberate intent to attract FDI. Creating certainty in the excise tax system by changing the excise adjustment approach to a fixed excise rate, in-line with (forecasted) inflation for three years in the medium-term budget, will allow businesses to plan and invest better.

*Response:* Not accepted. There is an excise tax policy in place to increase the excise rates by at least inflation or targeted incidence, whichever is higher, on an annual basis. The Government cannot commit to fixing annual excise rate increases for a three or five year period as suggested.

*Comment:* When considering the results of Budget 2022, we were pleased with the near inflation related excise adjustment and the diversified approach to adjustment across the alcohol categories. Disappointingly however, in contrast to beer and spirits, the wine industry was given a reduced excise adjustment rate. The crux of our contribution is therefore to fundamentally address the inconsistencies in the excise framework, that shows itself in the way the excise adjustment has been applied across the alcohol categories in Budget 2022.

*Response:* Noted. Some of the policy issues will be addressed in the policy review process underway. However, it should be noted that beer is the preferred alcoholic beverage and dominates the alcoholic beverage market. It accounts[[1]](#footnote-2) for approximately 75 per cent of total alcoholic beverage consumption by volume, with alcoholic fruit beverages & spirit coolers at 12 per cent, wine at 10 per cent, and spirits at 3 per cent. Industry data[[2]](#footnote-3) further estimates that beer represents about 51.4 per cent of the market based on absolute alcohol content and about 65.75 litres per capita consumption for individuals 15 years and older compared to wine estimates of 16 per cent and 8.61 litres in 2021.

*Comment:* We have recommended that the distortionary effect of the preferential treatment afforded to the wine industry be removed and simultaneously an alcohol-by-volume (ABV) or an alcohol content-based calculation system be applied to all alcohol categories, similar to that which currently applies to beer and spirits. This staggered excise system where higher excise taxes are paid by beverages with higher alcohol content would remove the current distortions in the excise system in which beverages with higher alcohol content are paying lower excise rates.There is a need for excise tax reform and the application of a consistent approach through alcohol-by-volume (‘ABV’) taxation for all alcohol products.

*Response:* Noted. In theory, the taxation of alcoholic beverages based on alcohol content would be ideal for public health purposes. However, in reality the excise policy structures implemented globally are such that the other factors are considered. The application of low excise duties on a per litre basis on wine is not unique to South Africa. This is prevalent mostly in wine producing countries. Also, as an example, the European Union Directive 92/84/EEC set the minimum rate at €0 for wine (still and sparkling) per hectolitre of product, for beer at €1.87 per hectolitre per degree alcohol, €45 for intermediate products (e.g. port, sherry) per hectolitre of product, and €550 for spirits per hectolitre of pure alcohol. This framework sets a differentiated tax structure which provides for different treatment of categories of alcoholic products (i.e. wine taxed per product volume, whereas beer and spirit based on alcohol content) and special rates for small producers.

*Comment:* The industry also impresses on National Treasury and SARS that the current regime of varying excise duty payment terms is inequitable. The Rules to the Customs and Excise Act set out varying payment terms for the various alcoholic products ranging from 30 days in the case of beer to 130 days in the case of spirituous beverages. It is further proposed that the payment terms for the collection of excise duties should be uniformly applied across all alcoholic products.

*Response:* Noted. The current differential excise duty payment terms for the respective alcoholic beverage product categories reflect the unique product-specific characteristics. Excise duties are collected at a manufacturing level under the duty-at-source administration, but are consumption taxes for which the tax costs are recovered by industry from consumers. The lengthy maturation periods of wine and spirits mean that these industries typically have to bear the costs of excise duties on their products for several years before it can be recovered from consumers, while the beer industry is in the favourable position to market its products and recover excise duty paid by it much sooner. The impact of these factors on the cash flow of the respective industries are reflected in the differential historical payment terms. Nonetheless, SARS in its 2019 discussion document expressed its intention to review and explore uniform payment terms during the process to rewrite the excise legislation.

*Comment:* A study of Part 2A of Schedule No. 1 to the Customs and Excise Act reveals that alcoholic products are divided into no less than sixteen (16) groupings with approximately ten (10) different excise duty rates applied. Within each product grouping further subdivisions exist based on factors such as packaging, feedstock material, fermentation and mixing. This has made the excise duty tax regime difficult for producers to administer and has inhibited innovation in the beer industry.

*Response:* Not accepted. The contention by the industry that the taxation of all alcoholic beverage product categories by absolute alcohol content would significantly reduce the number of tariff headings and tariff items for tariff classification purposes is not accepted. The present tariff classification of the current excise product categories is based on the internationally Harmonised System classification of the World Customs Organisation and are also harmonised with the Liquor Products Act, 1989, of the Department of Agriculture, Land Reform and Rural Development (DALRRD) for the regulation of the alcoholic beverage industries. Even though taxation per absolute alcohol content would simplify the excise administration, it would not affect the need for tariff classifications of the respective product categories for such harmonisation and which forms the foundation for the customs and excise treatment of all tradeable goods. Nor would it remove the need for all the alcoholic beverage industries to obtain compulsory tariff determinations from SARS for each of their respective products as required in terms of section 47(9) of the Customs and Excise Act for the application of harmonised tariff classification principles.

*Comment*: We would like to commend National Treasury for taking a far more balanced approach in respect of the current 2022/2023 excise increase than that which was seen in the 2021/2022 fiscal year. As was previously pointed out to National Treasury, the approach taken in the 2021/2022 fiscal year (i.e. an 8% excise increase) if continued, would be unsustainable for the legal tobacco industry.

*Response*: Noted.

*Comment:* The Draft Rates Bill proposes to increase the excise rate on cigarettes by 5.5%. This excise hike has placed the excise incidence on cigarette’s Most Popular Price Category (“MPPC”) at 45% compared to a targeted incidence of 40% as per the National Treasury’s excise policy. The total tax incidence on the MPPC currently sits at 58.1% against the background of falling consumer affordability and unprecedented levels of illicit trade.

*Response:* Noted. Though the proposed increases keep the tax incidence above the 40 per cent policy guideline, the industry has continued to absorb a portion of the excise increases as opposed to passing them through to consumers, which leads to an overestimated tax incidence. The adjustments correct for any price movements that tend to undermine Government’s policy intention to reduce consumption and improve public health. The excise increases also seek to ensure that tobacco products do not become affordable over time as this will increase consumption of tobacco products, which goes against public health policy objectives. The excise policy framework for tobacco products is currently under review and once completed, all the stakeholders will be informed and a consultative process initiated.

*Comment:* Recommend that National Treasury revise the base on which the current excise increase is determined. Using Peter Stuyvesant as the MPPC is no longer relevant in the current market. In line with global best practice, South African fiscal policy in respect of cigarettes should be determined on Weighted Average Price (“WAP”) in the market.

*Response:* Not accepted. A revision of the Most Popular Price Category (“MPPC”) to the Weighted Average Price (“WAP”) will be a fundamental or substantive policy change with significant ramifications for tobacco control policy in South Africa. The current benchmarking using MPPC already has differential impacts on cigarette products in terms of excise burdens, so National Treasury does not envisage a situation where there is a reversal on the current levels of excise duty rates. However, the excise policy framework for tobacco products is currently under review and some of these issues will be considered and inputs from all stakeholders will also be considered.

* 1. Illicit trade of tobacco products and alcohol products

*Comment:* The macro-economic environment in South Africa is worsening and consumers are being further stretched. Duty Paid (“DP”) cigarettes are becoming less affordable to consumers, who are moving at a rapid rate to the Duty Not Paid (“DNP”) cigarette market. A consequence of the above is that South Africa now has one of the highest illicit cigarette trade levels in the world at approximately 62% of consumption. The vast majority of all consumption (illicit and licit), approximately 80%, takes place in the informal trade. The informal trade is dominated by single stick sales, and given the DNP price points, the legal market can simply not compete

*Response:* Noted. National Treasury acknowledges that the problem of illicit trade undermines the health and excise policy objectives. However, the problem of illicit trade is also an act of criminality and cannot be dealt with through excise rate adjustments but needs to be effectively addressed through robust compliance and law enforcement mechanisms. SARS has been investigating and clamping down on the illicit economy focusing on the tobacco, gold and fuel industries, and this has resulted in many enforcement actions taken. SARS is harnessing its capabilities to make non-compliance with legal tax obligations hard and costly to those who are engaged in this criminal pursuits.

*Comment:* The current cigarette excise increase (which took effect in February 2022) has helped close the gap between the lowest priced products at the bottom of the legal market (selling at R32 per 20) and illicit products being sold as low as R7 per pack of 20. Recommend introducing into the Act, through a primary legislation change, a Minimum Retail Price point of R32 per pack of 20 to achieve effective enforcement and to address retail tax compliance. A primary legislation change will allow all manufacturers to provide support (through public consultation) to National Treasury as to why the R32 is too high or too low.

*Response:* Noted.The issue of Minimum Retail Sales Price is a new proposal in terms of the current policy regime. The excise policy framework for tobacco products is currently under review. Inputs from all stakeholders such as this will be considered.

*Comment:* Given the Southern African Customs Union (“SACU”) Agreement, and the Duty at Source (“DAS”) system, a track-and-trace system aligned to that currently being introduced in Botswana should also be implemented in South Africa. This will allow for interoperability within SACU, strengthening the ability of the Authorities to enforce and ultimately clamp down on illicit trade.

*Response:* Noted. The National Department of Health is leading Government on the matter of ratifying the World Health Organisation's Protocol to Eliminate Illicit Trade in Tobacco Products. As part of the Protocol, South Africa would be required to consider, as appropriate developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.

*Comment:* Continue to increase excise in a balanced manner which fully appreciates the extent of the illicit trade problem in South Africa, the effect that this has had on the MPPC concept and the affordability issues currently being faced by the majority of South Africans. This will prevent further volume being lost to illicit trade and will ultimately translate into a positive net effect for the fiscus.

*Response:* Noted.

*Comment:* Illicit alcohol trade is not only a problem linked to a lack of enforcement, but very much influenced by decisions made at policy level. This is not merely a challenge to be solved by SAPS and SARS but also the responsibility of National Treasury, DAFF and DTIC as policy and regulatory bodies. The Industry request that government does not exacerbate an already precarious position between the licit and illicit alcohol market by increasing pricing of legal alcohol further and widening the price gap between the two, especially in an economy which is increasingly under strain.

*Response:* Noted. The problem of illicit trade is a concern for government and requires a concerted effort from all the role-players to address effectively. All law enforcement agencies can play an important role in curbing the scourge of illicit trade and efforts are made to address this problem.

1. **Draft Revenue Laws Amendment Bill**
2. TWO POT RETIREMENT SYSTEM

South Africa has different retirement fund vehicles available to individuals, including pension funds, provident funds, retirement annuity funds, pension preservation funds and provident preservation funds. Historically, each of these funds had a different tax treatment for contributions, alongside different rules for withdrawals. Since 2012, the South African retirement fund regime has been undergoing fundamental reforms since the retirement reform discussion papers published in 2012. These reforms include amendments to harmonise the tax treatment of contributions to the different types of funds, measures to increase preservation (both before retirement and at retirement), and reforms to lower charges and maximise benefits for members and improve defaults, governance and market conduct processes. Many of these reforms have been implemented, including the harmonisation of the tax treatment of contributions to funds, which was implemented with effect from 1 March 2016 and the preservation of provident funds at retirement through annuitisation, effective from 1 March 2021.

There are two primary concerns regarding the current design of the retirement system. The first concern is the lack of preservation before retirement. For pension funds and provident funds, this access is dependent on an employee terminating employment. Individuals can then access their funds, in full, when changing or leaving a job. The second concern is the lack of access in cases of emergency by some households that are in financial distress that have assets within their retirement funds. These two objectives can be contradictory, if not properly designed to limit access to funds before retirement.

In order to address these concerns, during the February 2021 Budget Speech and November 2021 MTBPS Speech, the Minister made announcements in this regard.

These announcements were followed by a discussion document published by National Treasury for public comment on 15 December 2021, titled “Encouraging *South African Households to save more for retirement”.* The discussion document proposed a new retirement fund regime that aims to address the above-mentioned concern, a “two-pot” retirement system, namely, a “Savings Pot” and a “Retirement Pot”. These two pots will be housed within the current types of available funds, that are, pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds. The two-pot retirement system will retain the current principle of EET (i.e. exempting contributions, exempting growth, taxing withdrawals and benefits. Members of retirement funds will still receive a deduction on contributions up to the lower of 27.5% of gross remuneration or taxable income or R350,000 per tax year). Below is the summary of the tax treatment of contributions and withdrawals proposed by the two pot retirement system. It is important to note that the proposed tax changes are subject to the rules of the fund. The proposed two pot retirement system will come into effect on the proposed implementation date, which is 1 March 2023, and will apply in respect of amounts contributed to retirement funds on or after that date.

It should be noted that the two-pots system is a complex reform, and will require time to implement, and also require complementary measures to implement in a manner that is in the best interests of the members of retirement funds.

* *Savings Pot*

There is no seeding finance available in the “Savings Pot”. As such, any amounts available for withdrawal from the ‘Savings Pot” will be accumulated from the date of implementation of the two-pot retirement system. A maximum of 1/3 of the total contribution can go to the “Savings Pot”. Contributions in excess of the allowable deduction will not be permitted into the “Savings Pot”. Amounts contributed to the “Savings Pot” can be accessed, however, individuals can only have one withdrawal during any twelve-month period from the “Savings Pot”. The minimum withdrawal amount from the “Savings Pot” is R2000. Withdrawals from the “Savings Pot” will be added to taxable income in the year of withdrawal and be subject to tax in the hands of the individual at the normal income tax tables. Should an individual opt not to make a withdrawal within a twelve-month period, the funds available in the “Savings Pot” will be available for withdrawal thereafter. An individual will be allowed to transfer the available funds from the “Savings Pot” to another “Savings Pot” or “Retirement Pot” free of tax. On the death of an individual member or on retirement of an individual member, any available amount from the “Savings Pot” will be taxable as a retirement lump sum subject to the retirement lump sum tables. When an individual ceases to be a tax resident for an uninterrupted period of three years or leaves South Africa at the expiry of the visa, the individual member will be allowed to withdraw all the funds from the ‘Savings Pot” and such withdrawal will be added to taxable income and be subject to tax in the hands of the individual at the normal income tax rates. These withdrawals will be subject to the rules of the fund.

* *Retirement Pot*

Not less than 2/3 of the total contribution can go to the “Retirement Pot”. All contributions not allocated to the “Savings Pot” will go to the “Retirement Pot”. Amounts contributed to the “Retirement Pot” cannot be accessed before retirement date. At retirement date, the total amount from the “Retirement Pot” must be paid in the form of an annuity (including a living annuity). The current minimum amount for purchasing an annuity (de minimis of R167 500) will apply to the ‘Retirement Pot”. An individual member will be allowed to transfer the available funds from the “retirement Pot” only into another “Retirement Pot” free of tax. When an individual ceases to be a tax resident for an uninterrupted period of three years, or leaves South Africa at the expiry of the visa, the individual member will be allowed to withdraw all the funds from the ‘Retirement Pot” and such withdrawal will be taxable as a withdrawal lump sum benefit in terms of the withdrawal tables. The proposed changes are subject to the rules of the fund.

* *Vested Pot*

All contributions and growth (i.e. retirement interest) prior to the implementation date of the two pot retirement system will have to be valued at the date immediately prior to the implementation, to enable vesting of right. This amount will be housed in the “Vested Pot”. As such, this implies that the ‘Vested Pot” will consist of the total retirement interest in the fund that exists immediately prior to the implementation of the two-pot retirement system and growth on that amount. No contributions may be made to this pot after the implementation of the two-pot retirement system, except in the case of a person who was a member of the provident fund and who was 55 years of age or older on 1 March 2021. An individual member will be allowed to transfer the available funds from the “Vested Pot” only into another “Vested Pot” free of tax. When an individual ceases to be a tax resident for an uninterrupted period of three years or leaves South Africa at the expiry of the visa, the individual member will be taxed in accordance with the tax provisions that applied prior to the implementation of the two-pot retirement system. The rules of the fund applicable prior to the implementation of the two-pot retirement system will apply in this regard.

*Comments on broader retirement policy issues*

*Comment:* The proposed implementation date of 1 March 2023 is not feasible given the system changes, amongst others, required to administer the two-pot retirement system. A lead time of 12 months is required to allow retirement funds to make changes to their rules and facilitate systems and process changes. Further, the FSCA would still need time to consider, approve and register the rule amendments. Time restrictions will also impact member communication. Consideration of specific amendments to the Pension Funds Act, to provide for the two-pot system are also required.

*Response:* Accepted. The implementation date for the two-pot retirement system will be postponed from 1 March 2023 to 1 March 2024.

*Comment:* The two-pot retirement system reform is welcome and supported, however, lack of access on implementation date will result in workers resigning. It is suggested that seeding be catered for from the accumulated vested pot into the savings pot to provide for immediate relief or withdrawals.

*Response:* Accepted. Government is open to allowing once-off seeding capital, as long as it does not have adverse implications on liquidity, and the costs of such withdrawal is not imposed on members choosing not to withdraw. The mechanism to enable this will require consultation with commentators, to take the relevant risks and benefits into account as well as possible trade-offs on vested rights.

*Comment:* Though the proposal to include public sector funds in the two-pot retirement system is supported, further detail is required on how the regime will apply to defined benefit funds. This, given that a defined benefit fund member’s benefit is determined based on a defined formula, without reference to contributions and investment performance.

*Response:* Accepted. A consultative process will be undertaken with relevant defined-benefit funds and stakeholders to consider the options available as relates to public sector funds. Protective mechanisms will be explored, including increasing future contributions when a member withdraws funds before retirement. The outcome of the consultative process will then inform any required legislative amendments.

*Comment:* Clarification should be made that all funds must provide a savings pot with one-third of contributions going into that pot. Members should not be given the ability to contribute less than a third into the savings pot.

*Response:* Accepted. Clarification will be made in the 2022 draft Revenue Laws Amendment Bill that members would be required to contribute a third of their contributions into the savings pot.

*Comment:* Clarity is sought with regards to how the proposed 12-month withdrawal period as relates to withdrawals from the savings pot is to be determined.

*Response:* Accepted. The 12-month period is intended to be a rolling 12-month period. The 2022 draft Revenue Laws Amendment Bill will be amended to clarify this policy intention.

*Comment:* Clarity is requested regarding whether the R2 000 minimum withdrawal amount from the savings pot is a gross or net amount.

*Response:* Accepted. The policy intent is for the R2 000 to be a gross amount. The 2022 draft Revenue Laws Amendment Bill will be amended to clarify this policy intention.

*Comment:* Members who exit a fund and find themselves in instances where the balance in their savings pot is less than R2 000 should be allowed to either withdraw said amounts or have the balance automatically transferred into their retirement pot.

*Response:* Accepted. The 2022 draft Revenue Laws Amendment Bill will be amended to cater for the commutation of small balances within the savings pot when a member exits the relevant fund.

*Comment:* Clarity is requested with regards to how the R165 000 de-minimis is affected by the current regime, will it apply on a cumulative basis or on a per-pot basis.

*Response:* Accepted. The policy intent is for the R165 000 de-minimis to apply on a cumulative basis to amounts subject to annuitisation (i.e. the retirement pot and two-thirds of the vested pot). The 2022 draft Revenue Laws Amendment Bill will be amended to reflect this intention.

*Comment:* Clarity is requested with regards to whether or not participation in the two pots regime is mandatory for all funds.

*Response:* Accepted. The policy intent is for participation to be mandatory for all funds. The 2022 draft Revenue Laws Amendment Bill will be amended to reflect this intention.

*Comment:* The draft bill appears to be explicit on the fact that costs should be deducted from contributions, however, funds deduct costs from contributions and fund values. Consideration should be given to how costs are to be deducted in instances where funds do not receive contributions, but rather receive transfers from other funds. It is further requested that the scope and nature of charges that are to be deducted from contributions or fund values is clarified and certainty is provided that such charges do not include subsequent administration and transactional fees.

*Response:* Accepted. Clarification will be made in the 2022 draft Revenue Laws Amendment Bill.

*Comment:* Clarity is sought with regards to whether or not the same investment strategy would be followed across all pots. It should also be clarified whether compliance with Regulation 28 would apply on a per-pot basis or across all pots.

*Response:* Comment misplaced. This issue should be raised with and addressed by the Regulator. The tax legislation is not the appropriate mechanism to deal with this concern.

*Comment:* There is uncertainty with regard to whether or not provident fund members who were over the age of 55 as at 1 March 2021 are able to participate in the 2 pots regime. Clarity is requested with regard to whether participation in the regime by said members is automatic, at the discretion of the member, or simply not permissible. Further to the above, the draft bill seems silent on the treatment of T-Day vested rights. Clarity is requested with regard to the interaction between the T-Day vested rights and the newly defined vested pot.

*Response:* Noted. The policy intent is for provident fund members who were 55 years or older as at 1 March 2021 to be given the option to either continue contributing to their vested pot (in such cases 100% of the contribution will be allocated to the vested pot provided the member remains in the same fund they were a member of pre 1 March 2021) or participate in the new regime (with one-third of contributions allocated to the savings pot and two-thirds to the retirement pot). As relates to the interaction between the T-Day vested rights and the newly defined vested pot, the policy intent is for the vested pot to be an accumulation of all vested and non-vested rights earned prior to the 2 pots implementation date.

*Comment:* Clarity is requested with regard to the impact of the regime on section 37D deductions as envisaged in the Pension Funds Act (namely, pension backed housing loans, divorce order settlements, maintenance orders and amounts due by a member to an employer).

*Response:* Accepted. Government acknowledges that changes will need to be made to section 37D of the Pension Funds Act, 1956 (Act No 24 of 1956) to cater for the two pot retirement system and to ensure that section 37D deductions are catered for from the vested and retirement pot when membership from the fund is terminated or when divorce order settlements become due and payable.

*Comment:* Consideration should be given to clarifying in the legislation that the various pots are components within the relevant fund. As such, when transferring from one fund to another, all pots need to be moved from the transferor fund to the transferee fund (i.e. a ‘leave no pot behind’ principle needs to apply). Further to the above, it also needs to be clarified that transfers of any nature are only permissible when fund membership is terminated.

*Response:* Partially accepted. Clarification will be made in the 2022 draft Revenue Laws Amendment Bill.

*Comment:* It is requested that ‘legacy’ retirement annuity products are exempted from participation in the two-pot retirement system as participation would require a redesign of historically acquired insurance policies together with their respective terms and conditions.

*Response:* Noted. A consultative process shall be undertaken with the Regulator and stakeholders to assess the merits of the above request.

*Comment:* Consideration should be given to allowing withdrawals from the retirement pot in instances where a member resigns or is retrenched.

*Response:* Partially accepted. Given that retrenchment is beyond the member’s control, Government proposes that limited income-based withdrawals be permitted from the retirement pot. These withdrawals will be subject to certain conditions (i.e. the vested and savings pots have been fully utilised, access to UIF benefits have been exhausted – the member will therefore be required to prove that they have no other alternative income source) and will be provided for a limited period and as a form of annuity (with a maximum per year).

*Comment:* Clarity is requested on the treatment of arrear (i.e. late) contributions.

*Response:* Accepted. Arrear contributions that relate to a post-implementation period will be allocated to the respective savings and retirement pots. If the arrear contribution relates to a pre-implementation period, the current pre-implementation dispensation will apply.

*Comments on tax policy issues*

*Comment:* Automatic allocation of contributions in excess of the deductible limit is not required, as members can move contributions that they believe are in excess of their requirements from the savings pot to the retirement pot. Moreover, the proposal to allocate contributions in excess of the tax-deductible limits (currently R350 000 per annum or 27.5% of taxable income) cannot be executed by fund administrators. This is due to the fact that they do not have sufficient information to monitor the member’s position relative to the limit, this is particularly true for members who contribute to more than one fund.

*Response: Accepted.*  The administrative constraints are sufficiently onerous to withdraw the proposal. As a result, the proposed changes to section 11F in the 2022 draft Revenue Laws Amendment Bill will be withdrawn.

*Comments:* One of the proposed remedies for non-deductible contributions is to apportion tax free contributions between the savings and retirement pots.

*Response:* Not accepted. This creates new complications due to the different tax treatments of the pots. It would result in particularly generous tax treatment of over-contributions to the savings pot, especially relative to other tax-favoured savings vehicles that have annual limits. Non-deductible contributions will only be offset against future years’ taxable income, lump sum payments from the vested pot or post-retirement annuity payments (via section 10C).

*Comments:* The draft bill envisages that upon death or retirement the member or beneficiary of the fund will prefer a lump-sum payment from the remainder of the savings pot. The drafting should be neutral and allow choice between a lump-sum or annuity payment.

*Response:* Accepted. Changes will be made in the 2022 Draft Revenue Laws Amendment Bill to allow for the possibility of receiving an annuity payment from the savings pot, which will be taxed at marginal rates. Upon retirement the member will also have the option of transferring the remainder of their savings pot to the retirement pot.

Comments: It is suggested by some commentators that no tax be levied on withdrawals from the savings pot, or for withdrawals from this pot to be taxed according to the pre-retirement lump sum tax tables.

*Response:* Not accepted. As explained in the discussion document, taxing at marginal rates is more appropriate, and was supported by a number of commentators to the discussion paper. Pre-retirement lump sum tables, in particular, give the impression that pre-retirement withdrawals attract lower rates than other income sources (this in addition to the generous contribution deductions). The main aim of retirement savings is income replacement, or income smoothing to meet basic expenditure needs. This set of reforms effectively enables some level of income replacement before retirement. This means that withdrawals from the savings pot are taxed in exactly the same way as other sources of income when they become disposable in the hands of the taxpayer. If the withdrawals from the savings pot come at a time when income is lost (e.g. retrenchment or resignation), then withdrawals that serve to replace that income will likely attract the same tax rates as it would usually attract (if not lower). If the withdrawal comes at a time when income is still intact, but expenditure rises unexpectedly, then the aim is to ensure that the withdrawal still attracts the appropriate level of tax that is disposable to the taxpayer.

*Comments:* Tax withholding by fund administrators of withdrawals from the savings pot would require enablement through the Fourth Schedule. This is advisable as this is a similar rate structure.

*Response:* Accepted. Changes will be made in the 2022 draft Revenue Laws Amendment Bill to allow for the administrative mechanism similar to the current applicable effective tax rates that is communicated by SARS to administrators in the case of taxpayers who receive more than one pension income.

*Comments*: It is proposed that withdrawals from the savings pot are taxed at a flat rate, with rectification at assessment.

*Response:* Not accepted. This will likely lead to large assessment payments by members who make withdrawals.

*Comments:* It is not clear why the savings pot should also be subject to the 3-year waiting period when a taxpayer chooses to emigrate, as it is meant to be available at any time.

*Response:* Accepted. The 2022 draft Revenue Laws Amendment Bill will be amended to ensure that there is parity with domestic treatment (namely that withdrawals from the savings pot are permissible with a period of at least 12 months between withdrawals and taxed at marginal rates).

*Comments:* Members who were over 55 years of age on 1 March 2021 may well have need for a savings pot. However, the draft legislation has, given their vested rights under the annuitisation reform, restricted their contributions to the “old order” provident funds, which do not have a savings pot.

*Response:* Noted. The members’ preference will require a choice from the member with regard to their continued membership in the provident fund, which enjoys a 100% lump sum pay-out on retirement. If a savings pot is preferred, then the member will need to select a new product with such a feature. The 2022 draft Revenue Laws Amendment Bill will be amended to enable the appropriate transfer. This enablement can however not provide for early withdrawals from a savings pot together with a full withdrawal upon retirement, in the absence of preservation.

*Comment:* The naming conventions utilised for the various pots in the reform need to be reconsidered as the current names run the risk of creating confusion, which should be avoided at all costs. The addition of further new definitions may therefore be required to mitigate the risk of causing confusion.

*Response**:* Noted. Government acknowledges that what is referred to as “pots” in the 2022 draft Revenue Laws Amendment Bill are for all intents and purposes components within the respective funds, and will consider an adjustment in the names to reflect their component nature. Further to the above, additional definitions will, where necessary, be incorporated into the 2022 draft Revenue Laws Amendment Bill.

*Comment:* The current drafting as relates to the “savings pot”, “savings withdrawal benefit” and retirement pot” definitions require some re-working so as to ensure that the policy intent is correctly reflected in legislation.

*Response:* Accepted. Clarification will be made in the 2022 draft Revenue Laws Amendment Bill.

*Comment:* The proposed amendments to the Second Schedule to the Income Tax Act are unnecessary as the current Second Schedule provisions sufficiently cater for all envisaged transfers.

*Response:* Notaccepted. Government is of the view that under the current Second Schedule provisions, there are no limits imposed on the proportion(s) that can be transferred from one fund to another. As a result, a member has the ability to split their retirement interest into smaller balances and transfer said balances into separate funds. Under the 2 pots regime, when transferring from one pot to another, the full value in the transferor pot needs to be transferred into the transferee pot (i.e. this value cannot be split into multiple smaller balances before effecting a transfer). As such, the preference is therefore to retain these proposed amendments.

**ANNEXURE A: LIST OF COMMENTATORS**

1. **Actuarial Society of South Africa**
2. **IRFA**
3. **ASISA**
4. **BDO Tax Services (Pty) Ltd**
5. **Beer Association of South Africa**
6. **British American Tobacco**
7. **City of Cape Town**
8. **COSATU**
9. **ENSafrica**
10. **Financial Intermediaries Association of Southern Africa**
11. **Financial Service and Conduct Authority**
12. **Global Investment Reporting (Pty) Ltd**
13. **Government Employees Pension Fund**
14. **Individuals (x 80)**
15. **Keystone Actuarial Solutions**
16. **Old Mutual**
17. **OUTvest**
18. **Payroll Authors Group of South Africa**
19. **Pension Funds Adjudicator**
20. **Philip Morris South Africa (Pty) Ltd**
21. **PWC**
22. **South African Breweries**
23. **SAICA**
24. **South African Institute of Taxation**
25. **Standard Bank**
26. **Tobacco, Alcohol and Gambling Advisory**
27. **WealthPort**
28. **WILLIS TOWERS WATSON**

1. WESGRO (2021). South African Wine: Trends and Opportunities for Trade in Africa. https://www.wesgro.co.za/uploads/files/Research/South-African-Wine-Trends-and-Opportunities-in-Africa\_Wesgro-IQ\_20210518.pdf [↑](#footnote-ref-2)
2. SAWIS (2021). SA Wine Industry 2021 Statistics Nr 46. Accessible at https://www.sawis.co.za/info/download/Book\_2021.pdf [↑](#footnote-ref-3)