

We have endeavoured to use a simplified form of the annexure “C” submission format as the numerous comments on the Bill, some of which are drafting technicalities, do not require the comprehensiveness of the annexure “C” format. The legal nature of the problem and detailed description is given in each instance. The persons impacted in each case are retirement fund members and administrators of retirement funds.

The following points are specifically noted for consideration:

SUBSTANTIAL ERRORS IN THE DRAFTING OF THE BILL

There are some significant drafting errors. It is unclear what can be done at this stage of the parliamentary process, particularly as it appears that the implementation date will revert to 1 March 2024, but certain wording in the Bill is not correct and will lead to the incorrect application of the two-pot system.

Drafting errors that do not correctly reflect the responses of National Treasury in their draft Response document and slides presented to the Standing Committee on Finance on 25 October 2023:

1. **Provident fund member over age 55:** It is noted in the draft National Treasury response document that it is accepted that members of provident funds who were age 55 and over on T-day (1 March 2021) will remain in the vested component with the option to opt in to the two-pot system. The definition of “vested component” has not recorded this correctly as paragraph (b) refers to members electing to contribute to the vested component, whereas contributing to the vested component will not require election – it will be the default for these members. This is a fundamental flaw and needs correction.

It also needs to be made clear that if a member opts in to the two-pot system, they are opting in to both the retirement component and the savings component.

2. **Seed capital apportionment:** The response document confirms that “seed capital” in provident funds will be apportioned between the 1 March 2021 (“T-day”) vested and non-vested portions. However, in the definition of “savings component” the Bill records the apportionment incorrectly. It fails to note that the vested portion includes fund return on the T-day amount. This needs to be redrafted to reflect that the fund return on the T-day amount is included in the vested portion. It then also needs to reflect that the non-vested portion which is made up of the contributions of the member after T-day together with fund return thereon. The apportionment of seed capital is then made proportionately from these two portions (which we loosely refer to as the “vested” and “non-vested portions”).
3. **Ceasing to be a SA tax resident after 1 March 2021:** Currently, “paid-up” members of pension and provident funds as well as members of preservation funds who have not yet exercised their right of one withdrawal, are entitled to withdraw immediately from their funds, without any ‘waiting period’. On the other hand, members of preservation funds who have already exercised their one withdrawal and retirement annuity fund members are currently able to take a withdrawal on ceasing to be a resident provided they have not been a resident for a period of at least three years.

The Bill proposes that the right to take withdrawals due to cessation of tax residency now be included in the definitions of the various funds. However, the proposed wording requires the member to have ceased their residency for a period of at least three years in order to withdraw from their vested component.

This means that the member's rights to an immediate withdrawal will not have been retained, contrary to what was confirmed by Treasury in their slides presented to the Parliamentary Standing Committee on Finance and in their draft Response document. In order to ensure that such rights remain vested, the draft legislation needs to be amended so that members of pension and provident funds as well as preservation funds who have **not** already exercised their right of their first withdrawal, will be entitled to immediately take a withdrawal on ceasing to be resident - no waiting period of three years should apply in such instances.

4. **Exclusions:** ASISA provided a list of funds and categories of members that should be to be excluded from the two-pot system. We note that some have been included in the Bill and others not. While the Treasury Response document listed the types of funds that would also be excluded, such as funds in liquidation and dormant funds, not all of these funds have indeed been excluded. This is clearly a drafting oversight, which will bring about considerable waste of fruitless system-build administration and costs.
5. **Members' contracts within a retirement fund:** The Treasury Response document stated that amendments would made to the draft legislation "to ensure that the policy intent that the various components can exist on a per contract basis is fully expressed." This has not been achieved. For example, in the definition of "savings component", seed capital should be per contract in the fund, not at fund level. Several drafting changes are required to ensure that the two-pot system operates on a per contract basis as intended.

There are several other drafting errors and ambiguities in the Bill which need to be corrected and clarified, for example:

6. **The term "retirement interest"** is defined, and must be retained in the definitions of "pension fund", "provident fund", "pension preservation fund", "provident preservation fund" and "retirement annuity fund". It is important to retain the "retirement interest" reference point in the annuitization requirement portion of these definitions, because the maintenance of provident fund member commutation rights (that existed prior to 1 March 2021) in these definitions is achieved in the definition of "retirement interest". Without these references, these vested rights will be lost, which is not Treasury's intention. This is a serious problem. In addition, there is no consistent use of defined terms in these definitions of the various types of retirement funds.
7. **Definition of "retirement interest":** There is no need for a pre-1 March 2025 provision and a post- March 2025 provision. Intra-fund transfers should not be part of the definition and there should be no reference in the definition of retirement interest to the proposed new paragraph 2(1)(d).
8. **Maintenance awards:** The Bill provides for section 37D deductions to be taxed under the Second Schedule to the Act. This is correct for all section 37D deductions except maintenance awards which are taxed under section 7(11) of the Income Tax Act. This differentiation needs to be included.
9. **The use of the words "member" and "employee"** in different definitions, for example the word "member" is used in the definition of pension fund and "employee" in the definition of provident fund, needs to be standardized as "member". In relation to a retirement fund and in the Pension Funds Act "member" is a defined term and should be used as such with reference to any type of retirement fund. This leads to the incorrect outcome in some cases e.g. the definition of "pension fund" where paid up members who have elected to preserve their benefits in the fund of their previous employer, are no longer employees. They remain members of the fund, despite no longer being employees of the employer.

10. **Non-member spouse transfers.** ASISA members asked for an indication of whether a transfer to a non-member spouse fund should mirror the components in the member fund. This seems to have been provided by means of the deductions in paragraph 6B of the Second Schedule. However, non-member spouse accruals have been included in the new paragraph 2(1)(d). An accrual for a non-member spouse is already dealt with in paragraph 2(1)(iA). A transfer should be a sub-section of that and not a new sub-section. It needs to be borne in mind that the Second Schedule is a taxing schedule for those lump sum and transfer payments that are permissible. It is not appropriate to include provisions in this schedule that indicate what is permissible and what is not permissible. The appropriate place for that is in the various two-pot definitions in section 1 of the Income Tax Act. It is therefore suggested that amendments be made to those definitions and that no amendments be made to the Second Schedule, as the current Second Schedule provisions adequately provide for the taxation of such transfers.
11. **Seed Capital:**
- The previous draft Bill required seed capital to be determined as at 29 February 2024. While this provision remains in the Bill, a proviso has been added which has altered the wording to state “the amount may be determined on or after 1 March 2025, and the allocation must be backdated to that date”. The proposed wording that the amount (of the seed capital) can be determined after 1 March 2025 gives the administrator time to determine the amount. However, two clear processes are required:
 - (i) Determination of the value of the seed capital -
 - The seed capital should be determined on the member's actual share of fund as at 28 February 2025.
 - Unless a fund credit is physically in the member's account on that specified date, it cannot be taken into account in the determination of the member's seed capital even where a fund contribution is due but not yet paid e.g. February contributions are only paid on 1 March 2025 or during March.
 - (ii) Allocation to Savings Component -
 - The allocation of the seed capital to the savings component can take place on 1 March 2025 or thereafter.
 - Once the administrator has determined the value of the seed capital with reference to the value on 28 February 2025, the administrator has time after that date to allocate the funds to the Savings Component.
 - Amounts received by a fund on or after 1 March 2025 that relate to a period prior to that date (e.g. February contributions received in March) should be allocated to the vested component when they are received but not included in the seeding calculation (administrators cannot backdate the seeding calculation to a period before credits are actually received and allocated by a fund).
 - It will be important that Provident fund members who are over age 55 as at 1 March 2021 have a finite date by which they must opt in to the two-pot system, after which date this option should fall away. It is proposed that these members have one year from implementation of the two-pot system to make this election. These members should be dealt with as follows:
 - Date on which contribution splits between retirement component and savings component commence: As soon as reasonably possible after the date that the member communicates the election to participate in the two-pot system to the fund.
 - Date and value on which seeding calculation is based must be specified: Member's share of fund as at last day of the month preceding the date on which the above contribution split commences.

12. **Extent to which funds have the discretion to set their own rules:** Clarification is required concerning whether or not funds can set parameters in their rules in respect of the timing and frequency of intra-fund transfers.
13. **The table below** sets out these and other drafting issues are set out in more detail.

MATTERS OF POLICY

14. **Taxation of transfers within the same fund i.e. intra-fund transfers.** These provisions incorporate an error of law. ASISA members remain of the firm view that transfers from component to component within the same fund do not, and should not, result in any accrual to the fund member as no funds ever become available to the member, neither do such funds leave the retirement fund. The administrator will simply re-allocate the funds between the components. Therefore, intra-fund transfers should not constitute taxable events that are subject to tax directives.
15. **Taxation of the savings withdrawal benefit:**
 - It is noted that in the draft response document, Treasury expressed the intention to implement a “directive” system for savings withdrawal benefits similar to the system used under paragraph 2(2B) of the Fourth Schedule to the Act, annuitants who have multiple annuities.
 - In terms of the current paragraph 2(2B) process, at the beginning of each tax year SARS provides an annuity administrator with a list of all the affected annuitants and the specific flat tax rate for each of those annuitants. The annuity administrator deducts PAYE from the annuity at that flat tax rate. The flat tax rate is calculated by SARS, taking into account all sources of the annuitant’s historical income. In this way a more accurate PAYE rate is applied. SARS bases its flat tax rate for annuitants on (inter alia) annuities paid to these annuitants in prior years. SARS can identify affected annuitants as a finite taxpayer list on its records and SARS can utilise the IRP5’s and IT3(a)s issued to them in respect of their annuities, as part of the calculation of the flat tax rate. SARS consequently issues the flat tax rate to annuity administrators each year without these administrators having to notify or engage SARS.
 - It is not clear how Treasury will implement a similar directive system for savings withdrawal benefits. Firstly, unlike the annuitant information it has on hand, SARS will not necessarily have any historical financial information for all members of retirement funds. In addition, as savings withdrawal benefits are transactional in nature and not automatic each year, SARS will not be able to identify those members who have taken/will take savings withdrawals in order to issue a list to administrators each year without the administrators having to notify or engage SARS.
 - Therefore, in ASISA members’ view, at the beginning of a tax year SARS will not be able to provide administrators with a list of members who took savings withdrawal benefits and a corresponding flat marginal rate of tax. Administrators will therefore still have to apply to SARS for a flat tax rate for each and every member who requests a savings withdrawal benefit. Administrators will still be subject to the existing tax directive process. As advised in previous submissions, the administrative and cost implications of the existing directive processes for the anticipated volumes of savings withdrawal benefits are significant.

ASISA therefore repeats members’ request for a practical solution. ASISA members commit to working with SARS to formulate a simplified tax directive application process, preferably on a bulk basis.



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
1(1)(b)	by the insertion in subsection (1) after the definition of “JSE Limited Listings Requirements” of the following definition: “<u>legacy retirement annuity policy</u>” means <u>any policy held by a retirement annuity fund entered into before 1 March 2025 with a pre-universal life or universal life construct, subject to such conditions that the Financial Sector Conduct Authority may determine.</u> ”	<p>This definition uses the wording – “<i>subject to such ‘conditions’ that the FSCA may determine</i>”.</p> <p>In the definition of “savings component”, in paragraph (g), the wording – “<i>that has been approved for ‘exemption’ by the FSCA</i>” is used.</p> <p>In the definition of “retirement component” the wording “<i>that has been ‘exempted’</i> from this provision, subject to the conditions that may be required by the FSCA” is used.</p> <hr/> <p>In the National Treasury (“NT”) SCOF presentation dated 25 October 2023, NT states: “It is proposed that retirement annuity funds retain their grandfathering status in terms of Regulation 28(3)(c) of the Pension Funds Act.”</p> <p>This Regulation outlines asset limits and provides that the portion of the total assets associated with a fund member policy, or with another contractual arrangement between the member and the fund relating exclusively to the fund’s liability to a particular member (or to the surviving spouse, children, dependents or nominees of the member) in terms of the rules of the fund, entered into before 1 April 2011, need not comply with these limits.</p>	<p>Consistent use of terms and an understanding of what the FSCA is actually empowered to do in this regard, is required.</p> <hr/> <p>We would like clarity as to whether grandfathering can be maintained for all of the following:</p> <ul style="list-style-type: none"> • On accounts for which seeding takes place. • For accounts for which a savings component withdrawal is processed. • For accounts where the member transfers between components.
1(1)(c)	by the insertion in subsection (1) after the definition of “Medical Schemes Act” of the following definitions:	Paragraph (d) should be dealt with differently..	An exception needs to be included in the sub-paragraph as indicated in column 3.



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>“member’s interest in the retirement component”</u> includes—</p> <p><u>(a) any amount allocated to the retirement component as contemplated in the definition of “retirement component”;</u></p> <p><u>(b) any amount credited to the retirement component on or after 1 March 2025;</u></p> <p><u>(c) any fund return as defined in section 1 of the Pension Funds Act in relation to amounts contemplated in paragraphs (a) and (b); and</u></p> <p><u>(d) reduced proportionally by any amount determined in terms of section 37D of the Pension Funds Act, which amount is deemed to be a lump sum benefit contemplated in paragraph 2(1)(b) of the Second Schedule,</u></p> <p><u>as determined in terms of the rules of the fund;</u></p>	<p>Legal Nature of the problem</p> <p>It states that section 37D deductions are - <i>“reduced proportionally by any amount determined in terms of section 37D of the Pension Funds Act, which amount is deemed to be a lump sum benefit contemplated in paragraph 2(1)(b) of the Second Schedule,”</i></p> <p>This does not take into account maintenance awards.</p> <p>Nature of the problem and factual description</p> <p>While it is agreed that section 37D deductions are taxed under paragraph 2(1)(b), there is an exception for maintenance awards which are taxed under section 7(11) of the Income Tax Act.</p>	<p>This needs to be included in the definition of all three components and this comment is repeated for all the components.</p> <p>member’s interest in the retirement component” includes—</p> <p><u>(1)(a)</u> <u>(b)</u> <u>(c)</u> <u>(2)(a) the above is</u> reduced proportionally by any amount determined in terms of section 37D of the Pension Funds Act, which amount, <u>other than any amount in respect of a maintenance award made by order of court under section 1 of the Maintenance Act, of 1998,</u> is deemed to be a lump sum benefit contemplated in paragraph 2(1)(b) of the Second Schedule.</p> <p>OR</p> <p>Re-format the definition so that there is no par (d) and the wording <u>“reduced proportionally by any amount determined in terms of section 37D of the Pension Funds Act, which amount, other than any amount in respect of a maintenance awards made by order of court under section 1 of the Maintenance Act, of 1998,</u> is deemed to be a lump sum benefit contemplated in paragraph 2(1)(b) of the Second Schedule”, is not indented in order that it will relate to all of paragraphs (a), (b) and (c).</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
1(1)(c)	<p><u>“member’s interest in the savings component”</u> includes—</p> <p><u>(a) any amount allocated to the savings component as contemplated in the definition of “savings component”;</u></p> <p><u>(b) any amount credited to the savings component on or after 1 March 2025;</u></p> <p><u>(c) any fund return as defined in section 1 of the Pension Funds Act in relation to amounts contemplated in paragraphs (a) and (b);</u></p> <p><u>(d) reduced by any amount as contemplated in the definition of “savings withdrawal benefit”; and</u></p> <p><u>(e) reduced proportionally by any amount determined in terms of section 37D of the Pension Funds Act, which amount is deemed to be a lump sum benefit contemplated in paragraph 2(1)(b) of the Second Schedule, as determined in terms of the rules of the fund;</u></p>	<p>Same comments as in “member’s interest in the retirement component”.</p> <p>(d) and (e) should be new paragraphs. It doesn’t flow to start (d) and (e) with the words “reduced”.</p>	<p>Same proposed solution as “member’s interest in the retirement component”.</p>
1(1)(c)	<p><u>“member’s interest in the vested component”</u> includes—</p> <p><u>(a) the value of the member’s interest in the fund that exists immediately prior to 1 March 2025;</u></p> <p><u>(b) any amount credited to the member’s vested component on or after 1 March 2025;</u></p> <p><u>(c) any fund return as defined in section 1 of the Pension Funds Act in relation to</u></p>	<p>Same comment on (d) and (e) as in the definitions of “member’s interest in the savings component” and “member’s interest in the retirement component”.</p>	<p>Same proposed solution as in definitions of “members interest in the savings component” and “member’s interest in the retirement component”.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>amounts contemplated in paragraphs (a) and (b);</u> <u>(d) reduced by any amount as contemplated in paragraph (a) of the definition of “savings component”;</u> <u>and</u> <u>(e) reduced proportionally by any amount determined in terms of section 37D of the Pension Funds Act, which amount is deemed to be a lump sum benefit contemplated in paragraph 2(1)(b) of the Second Schedule;</u> <u>as determined in terms of the rules of the fund;</u></p>		
1(1)(d)	<p>by the substitution in subsection (1) in the definition of “pension fund” for paragraph (i) of the proviso of the following paragraph: “(i) that the fund is a permanent fund <i>bona fide</i> established for the purpose of providing annuities on retirement date or for the dependants or nominees of deceased employees, 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 <u>in the definition of “savings withdrawal benefit”</u>, paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and”;</p>	<p>Legal nature of the problem</p> <p>“providing any benefit contemplated <u>in the definition of “savings withdrawal benefit”</u> should not be stated to be a purpose of the fund.</p> <p>Nature of the Problem and factual description</p> <p>This should not be a purpose. It is a right but not a purpose. Similarly, a withdrawal benefit on termination of service is a right but it is not a stated purpose.</p>	<p>The words: “<u>in the definition of “savings withdrawal benefit”</u>” should be deleted</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
1(1)(e)	<p>by the substitution in subsection (1) in the definition of “pension fund” in subparagraph (dd) of paragraph (ii) of the proviso for the words preceding the proviso of the following words: “that not more than one-third of the [total value] portion of the [retirement] member’s interest in the vested component may be commuted for a single payment, and that the remainder, <u>calculated together with the member’s interest in the retirement component</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 <u>member’s total [value] interest in the vested component, calculated together with the member’s total interest in the retirement component</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, <u>provident preservation fund</u> or a retirement annuity fund;”;</p>	<p>Inconsistent use of defined terms in corresponding provisions.</p> <p>Legal nature of the problem</p> <p>This provision is mirrored in the definitions of “pension fund”, “provident fund”, “pension preservation fund”, “provident preservation fund” and “retirement annuity fund”, but there is no consistent use of defined terms.</p> <p>Nature of the problem and factual description</p> <p>The use of undefined terms or differently defined terms has a substantive effect as the various terms mean different things, potentially resulting in different outcomes.</p> <hr/> <p>Use of the word “employee” –</p> <p>Legal nature of the problem</p> <p>Although a pension fund is an occupational fund and we note National Treasury’s response to the earlier ASISA comment, while it is true that most members of these funds are employees, all members are not necessarily still employees. References to “employee”, rather than “member” do not account for paid-up members in occupational funds, who are not employees.</p> <p>Nature of the problem and factual description</p>	<p>As this provision (and the corresponding provisions in the other fund definitions) refers to what happens at retirement, the correct defined terms to use are “retirement interest” and portion of “vested component” or “retirement component” as the context requires.</p> <p>The amendment therefore needs to extend to the proviso to also refer to the “retirement interest in the vested component”.</p> <hr/> <p>References to “employee” should be replaced with “member” to account for paid-up members who are no longer employed by a participating employer.</p> <p>“that not more than one-third of the [total value] portion of the [retirement] member’s <u>retirement</u> interest in the vested component may be commuted for a single payment, and that the remainder, calculated together with the member’s <u>retirement</u> interest in the retirement component, must be paid in the form of an annuity (including a living annuity), a combination of annuities</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>Due to Regulation 38 under the Pension Funds Act, the benefits of member of occupational funds will be preserved in-fund once the member’s employment is terminated. Such members are therefore no longer employees but may die with a benefit in the occupational fund or elect to transfer or retire from the fund long after employment has been terminated.</p>	<p>(including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the member’s total [value] retirement interest in the vested component, calculated together with the member’s total retirement interest in the retirement component, does not exceed R165 000, where the employee member is deceased or where the employee member 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 the retirement interest in the vested component an amount calculated as follows must not be taken into account:</p>
1(1)(f)	<p>by the addition in subsection (1) in the definition of “pension fund” of the following further proviso: <u>“: Provided further that the Commissioner may approve or recognise a fund contemplated in—</u> <u>(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—</u> <u>(aa) for the creation of the “savings component”, “retirement component” and “vested component” as defined in section 1;</u> <u>(bb) an employee may, prior to his or her retirement date, elect to receive the payment of—</u></p>	<p>Cease to be a resident</p> <p>Legal nature of the problem</p> <p>This has not been amended in line with the National Treasury draft Response document and what was communicated by National Treasury to the SCOF on 25 October 2023, which states: “The proposed amendment provides that an employee may, prior to his or her retirement date, elect to receive the payment of— <u>(bb)(B) an amount from the vested component, 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>	<p><u>(bb)(B)(AA)</u> must be amended to state: is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021;</p> <p>Reference to a three-year period must be deleted for the vested component.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>(A) an amount from the retirement component, 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> <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;</u></p> <p><u>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of—</u></p> <p><u>(AAA) working as contemplated in paragraph (i) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002);</u></p> <p><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; or</u></p> <p><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 application for that recognition received on or before 28 February</u></p>	<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;</u></p> <p>Nature of the Problem and factual description</p> <p>In the SCOF hearings on the draft Bill and in the slides presented at the hearings as well as in the Response document, it was indicated that existing rights would be protected and if a paid-up member was entitled to a withdrawal benefit in terms of the rules of the fund currently, that this right will be protected. This would also apply to preservation funds where the member had not yet taken the one-off right of withdrawal before retirement.</p> <p>The following appears on the NT slides: Vested component:</p> <ul style="list-style-type: none"> • <u>Preservation fund</u> members who have not exercised their right to a withdrawal will remain eligible to do so, taxed according to the relevant lump sum tax table. • <u>Occupational fund</u> members who are entitled to a withdrawal upon resignation / retrenchment will remain eligible to do so – taxed according to the relevant lump sum tax table. • (beyond permissible withdrawals): retain same provisions as is in place before implementation of two-pot amendments (i.e. waiting period of 3 years), taxed according to the relevant lump sum tax table. <p>Savings component</p> <ul style="list-style-type: none"> • remains accessible to member upon their exit and during the subsequent 3-year period, and taxed as gross income (subject to treaty provisions) as any 	



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>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> (B) <u>an amount from the vested component, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</u> (AA) <u>is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021;</u> (BB) <u>departed from the Republic at the expiry of a visa obtained for the purposes of—</u> (AAA) <u>working as contemplated in paragraph (i) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</u> (BBB) <u>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) <u>is a person who is or was a resident who emigrated from the Republic and that emigration is</u></p>	<p>other withdrawal from the savings component (i.e. no specific drafting required - as it is not an exception.) Retirement component: • will become available for withdrawal after 3 years, taxed according to the relevant lump sum tax table (subject to treaty provisions).</p> <p>However, the legislation has not been amended in line with the undertakings above.</p> <p>This same omission is in the definitions of</p> <ul style="list-style-type: none"> • Pension fund • Provident fund • Pension preservation fund • Provident preservation fund <p>which have the same error repeated.</p> <p>This submission is therefore repeated in respect of all the above fund definitions.</p> <hr/> <p>Legal nature and description of the problem</p> <p>Paragraph (i)(bb)(B) of the final proviso to the definition of “pension fund” makes provision for the payment of an amount from the vested component on cessation of residence or emigration. The reason for the inclusion of paragraph (B) is not clear as a member of a pension fund is always entitled to the amount in his/her vested component on termination of fund membership, and not only on emigration.</p>	<p>It may perhaps be that the intention is that the application of paragraph (i)(bb)(B) should be limited to deferred retirees. If so, this should be clarified.</p> <p>So as to make it clear that T-day vested rights are protected, “two-thirds of the <i>employee’s</i></p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>recognised by the South African Reserve Bank for purposes of exchange control in respect of application 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 delivery of currency on or before 28 February 2022; or</u></p> <p><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 employee's retirement interest in the vested component may be commuted for a single payment and that the remainder, calculated together with the employee's interest in the retirement component, 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 employee's interest in the vested component calculated together with the employee's interest in the retirement component, does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension</u></p>	<p>Legal nature and description of the problem</p> <p>It is stipulated in paragraph (ii) of the final proviso to the definition of "pension fund" that "<i>not more than one-third of the employee's retirement interest in the vested component may be commuted for a single payment and that the remainder, calculated together with the employee's interest in the retirement component, must be paid in the form of an annuity ... except where two-thirds of the employee's interest in the vested component ...</i>"</p> <p>The reason for the inclusion of the term "retirement interest" is that T-day vested benefits are excluded from the calculation of "retirement interest" in the various fund definitions in the Income Tax Act. Reference to "<i>the member's retirement interest in the vested component</i>" would accordingly be to the various fund definitions in the Income Tax Act. Reference to "<i>the member's retirement interest in the vested component</i>" would accordingly be to the T-day non-vested portion of the vested component, which would make it clear that T-day vested rights are still protected.</p> <p>The member's vested component includes both T-day vested and non-vested benefits. The reference to "<i>two-thirds of the employee's interest in the vested component</i>" does therefore not make provision for the fact that T-day vested benefits remain protected under the new regime.</p>	<p><i>member's interest in the vested component</i> should be "<i>two-thirds of the employee's member's retirement interest in the vested component</i>".</p> <p>The reason for the inclusion of the term "retirement interest" is that T-day vested benefits are excluded from the calculation of "retirement interest" in the various fund definitions in the Income Tax Act. Reference to "<i>the member's retirement interest in the vested component</i>" would accordingly be to the T-day non-vested portion of the vested component, which would make it clear that T-day vested rights are still protected.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>preservation fund, provident preservation fund or retirement annuity fund;</u></p>	<p>Legal nature and description of the problem</p> <p>This par (ii) is introducing annuitisation for par (a), (b) and (c) funds. The protection of the vested rights was already brought in with the Taxation Laws Amendment Act 20 of 2022. The protection so brought in does not include contributions made before 1 March 2021 to paragraph (a), (b) or (d) funds.</p> <hr/> <p>In paragraph (ii): “...<i>except where two-thirds of the employee’s interest in the vested component calculated together with the employee’s interest in the retirement component, does not exceed R165 000</i>....”.</p> <p>This should reference the member’s total interest in the retirement component.</p>	<p>T-day vested rights should be clearly set out in respect of par (a) and (b) pension funds.</p> <hr/> <p>Clarity is requested on why the word “total” has been omitted from this section.</p>
1(1)(g)	<p>by the substitution in subsection (1) in the definition of “pension preservation fund” for item (aa) in paragraph (a)(i) of the proviso of the following item: “(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, <u>including lump sums transferred from the member’s vested component, savings component and retirement component in the previous fund to the member’s vested component, savings component and retirement component in this fund.</u>”</p>	<p>Legal Nature of the problem</p> <p>(aa) states “<i>including.....in this fund</i>” It is not necessary to include this as the rules relating to the allowable transfers into similar components exist in the definitions of each component.</p> <p>Nature of the Problem and factual description</p> <p>This already exists in the definitions of the components and is therefore unnecessary. The legislation only needs to be changed where it is specifically necessary to incorporate two-pot changes.</p> <p>This comment applies to the same section in each of the definitions of pension fund, provident fund, pension</p>	<p>Make no change to the existing section 1(1)(g)</p>

Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		preservation fund, provident preservation fund and retirement annuity fund.	
1(1)(h)	by the substitution in subsection (1) in the definition of “pension preservation fund” for subparagraph (ii)(bb) in paragraph (a) of the proviso 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>including lump sums transferred from the member’s vested component, savings component and retirement component in the previous fund to the member’s vested component, savings component and retirement component in this fund;</u> ”;	Same comment as in section 1(1)(g) of the definition of pension fund.	Same comment as in section 1(1)(g).
1(1)(i)	by the substitution in subsection (1) in the definition of “pension preservation fund” for subparagraph (v) in paragraph (a) of the proviso 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	Same comment as in section 1(1)(g) of the definition of pension fund.	Same comment as in section 1(1)(g).



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	members of that other fund, <u>including lump sums transferred from the member's vested component, savings component and retirement component in the previous fund to the member's vested component, savings component and retirement component in this fund;</u> ”;		
1(1)(j)	by the substitution in subsection (1) in the definition of “pension preservation fund” for paragraph (b) of the proviso of the following paragraph: “(b) payments or transfers to the fund in respect of a member are limited to any amount <u>allocated to the vested component, savings component or retirement component or an amount</u> contemplated 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>Apart from the proposed wording being unnecessary and adding to the complexity of the provision the reference to amounts "allocated" (which is done AFTER transfer), is also problematic in that it pre-supposes that allocations take place at the same time as the benefits are transferred.</p> <p>Legal nature of the problem</p> <p>The current wording with the use of the word “or” implies that each component can be transferred to the fund independently. National Treasury has confirmed that all three components of a contract must be transferred together.</p> <p>Factual description</p> <p>The wording implies that just the savings component or the retirement or vested component in a fund could be transferred to the pension preservation fund.</p>	<p>Replace “or” with “and”.</p> <p>(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2(1)(a)(ii), (b) or (c) of the Second Schedule, <u>together with the member's interest in the vested component, member's interest in the savings component and the member's interest in the retirement component, allocated to the vested component, savings component or retirement component or an amount</u> contemplated 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>
1(1)(k)	by the substitution in subsection (1) in the definition of “pension preservation fund” for subparagraph (i) of paragraph (c) of the proviso of the following subparagraph:	It is assumed that with effect from the implementation date, members of preservation funds will only be able to take their one withdrawal from the “new” vested components (if they have not already done so) or vested	Clarity is required on how this is addressed in the proposed wording, since it refers to amounts/payments into vested components as well as other types of payments, which could



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	“(i) this paragraph applies separately to each payment or transfer to the [fund contemplated in paragraph (b)] <u>vested component or an amount in paragraph 2(1)(a)(ii), 2(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;</u> ”;	components transferred in. It is not clear how this is addressed in the proposed wording, since it refers to amounts/payments into vested components as well as other types of payments, which could include those which have also been transferred into the vested component.	include those which have also been transferred into the vested component.
1(1)(l)	by the substitution in subsection (1) in the definition of “pension preservation fund” for subparagraph (ii) of paragraph (c) of the proviso of the following subparagraph: “(ii) a member shall, prior to his or her retirement date, be entitled to the payment of— <u>(aa)</u> a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member— [(aa)(A)] (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 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 the currency on or before 28 February 2022; or	Same comment here as under ceasing to be a resident in clause 1(1)(f) above. <hr/> A lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule can only ever come from the vested component or the retirement component. The repetition is not necessary. However, withdrawals from each of these components are treated differently, so it is proposed that (aa) deal with withdrawals from the retirement component and (bb) deal with withdrawals from the vested component.	(bb)(A) must be amended to state: is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; <u>unless that person has taken a withdrawal benefit from the fund in terms of paragraph (c) of the definition of pension preservation fund, in which case that person must not be a resident for an uninterrupted period of three years or longer on or after 1 March 2021;</u> (aa)(b) should be deleted. <hr/> “(ii) a member shall, prior to his or her retirement date, be entitled to the payment of— <u>(aa)</u> <u>an amount from the retirement component, deemed to be paid as</u> a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member— [(aa)(A)] (a) ... [(B)] (b) ... [(bb)] (c) ...



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>[(B)] <u>(b)</u> 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)] <u>(c)</u> departed from the Republic at the expiry of a visa obtained for the purposes of—</p> <p>(AA) working as contemplated in paragraph (i) 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 that Act by the Director-General, as defined in that Act; and</p> <p><u>(bb) an amount from the retirement component and vested component, 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> <p><u>(A) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021:</u></p> <p><u>(B) departed from the Republic at the expiry of a visa obtained for the purposes of—</u></p> <p><u>(AA) working as contemplated in paragraph (i) of the definition of “visa”</u></p>		<p><u>(bb) an amount from the retirement component and vested component, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member <u>who has previously taken a withdrawal benefit from the fund in terms of paragraph (c) of the definition of pension preservation fund —</u></u></p> <p><u>(A) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; ...</u></p>

Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>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; or (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 of exchange control in respect of application 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; and”;</u></p>		
1(1)(m)	<p>by the substitution in subsection (1) in the definition of “pension preservation fund” for subparagraph (iii) of paragraph (c) of the proviso 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 <u>Second Schedule</u> in respect of that transferred amount, except to the extent that it is an</p>	<p>Legal nature of the problem</p> <p>This should only refer to the vested component.</p> <p>Nature of the Problem and factual description</p> <p>It should refer to the vested component only as there is no right of withdrawal from the retirement component and a right of withdrawal from the savings component is not taxed under para 2(1)(b)(ii).</p>	<p>It must clarify that this only applies to the vested component.</p> <p>(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 from <u>the vested component</u> 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 a savings withdrawal benefit;</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	amount contemplated in subparagraph (ii) or a savings withdrawal benefit; and”;		
1(1)(n)	<p>by the substitution in subsection (1) in the definition of “pension preservation fund” for paragraph (e) of the proviso of the following paragraph:</p> <p>“(e) not more than one-third of the [total value] portion of the retirement interest in <u>the vested component</u> may be commuted for a single payment, and that the remainder, <u>calculated together with the member’s interest in the retirement component</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 <u>member’s total [value] interest in their vested component, calculated together with the member’s total interest in their retirement component</u> does not exceed R165 000, where the member is deceased or where the member 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 the retirement interest an amount calculated as follows must not be taken into account—”;</p>	<p>Same comments regarding <i>de minimis amount</i> as is in section 1(1)(e) of the definition of pension fund.</p> <p>Refer to comment on 1(1)(e).</p> <p>It is preferable that the corresponding provisions of the definitions of each type of fund mirror each other to the extent applicable.</p>	<p>Same proposal regarding <i>de minimis</i> amount as is in section 1(1)(e) of the definition of pension fund.</p> <p>“(e) not more than one-third of the [total value] portion of the <u>member’s retirement interest in the vested component</u> may be commuted for a single payment, and that the remainder, calculated together with the member’s <u>retirement interest in the retirement component</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 member’s total [value] retirement interest in the vested component, calculated together with the member’s total retirement interest in their retirement component does not exceed R165 000, where the member is deceased or where the member 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 the retirement interest an amount calculated as follows must not be taken into account—”</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>Legal nature and description of the problem</p> <p>It is stipulated in paragraph (e) of the proviso to the definition of “pension preservation fund” that “not more than one-third of the portion of the retirement interest in the vested component may be commuted for a single payment, and that the remainder, calculated together with the member’s interest in the retirement component, must be paid in the form of an annuity ... except where two-thirds of the member’s total interest in their vested component, calculated together with the member’s total interest in their retirement component does not exceed R165 000 ...”.</p> <p>The member’s vested component includes both T-day vested and non-vested benefits. The reference to “<i>two-thirds of the member’s total interest in their vested component</i>” does therefore not make provision for the fact that T-day vested benefits remain protected under the new regime.</p>	<p>To make it clear that T-day vested rights are protected, “<i>two-thirds of the member’s total interest in their vested component</i>” should be “<i>two-thirds of the member’s total <u>retirement interest in their vested component</u></i>”.</p> <p>The reason for the inclusion of the term “retirement interest” is that T-day vested benefits are excluded from the calculation of “retirement interest” in the various fund definitions in the Income Tax Act. Reference to “the member’s retirement interest in the vested component” would accordingly be to the T-day non-vested portion of the vested component, which would make it clear that T-day vested rights are still protected.</p>
1(1)(p)	<p>by the substitution in subsection (1) in the definition of “provident fund” for paragraph (i) of the proviso of the following paragraph:</p> <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 purpose 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</p>	<p>Same comment as section 1(1)(d) of the definition of pension fund</p> <p>Legal nature of the problem</p> <p>The word “benefits” should not be deleted in favour of “annuities” for dependants.</p> <p>Nature of the Problem and factual description</p> <p>The inverse should apply. It should be annuities and not benefits for employees on retirement.</p>	<p>The word “annuities” should be applied for employees - the word “benefits” should not be applied to them. The word “benefits” should not be deleted or substituted with “annuities” in the case of dependants.</p> <p>“(i) that the fund is a permanent fund <i>bona fide</i> established solely for the purpose of providing [benefits] <u>annuities</u> for employees on retirement</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	and also for the purpose of providing <u>benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in the definition of “savings withdrawal benefit”, paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and”;</u>	On death of the member the beneficiaries are entitled to take the full amount in cash or partly and as an annuity. Therefore, it should be benefits and not annuities for dependants.	date or solely for the purpose of providing <u>benefits [benefits]-annuities</u> for the dependants or nominees of deceased employees or deceased former employees”
1(1)(q)	by the substitution in subsection (1) in the definition of “provident fund” in subparagraph (dd) of paragraph (ii) of the proviso of the words preceding the proviso of the following words: “that not more than one-third of the [total value] portion of the retirement interest <u>that exists in an employee’s interest</u> may be commuted for a single payment, and that the remainder <u>calculated together with the employee’s interest in the retirement component</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] employee’s retirement interest in the vested component, calculated together the employee’s interest in the retirement component, does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension	Same comments regarding de minimis amount as is in section 1(1)(e) of the definition of pension fund. In addition, refer to comments on 1(1)(e) regarding use of defined terms. It does not make sense to speak of “ <i>the retirement interest that exists in an employee’s interest</i> ”. Regarding: “... <i>except where two-thirds of the employee’s interest in the vested component calculated together with the employee’s interest in the retirement component, does not exceed R165 000</i>”. This should reference the member’s total interest in the retirement component. Clarity is requested on why the word “total” is omitted from this clause.	(dd) that not more than one-third of the [total value] portion of the <u>member’s</u> retirement interest <u>in the vested component that exists in an employee’s interest</u> may be commuted for a single payment, and that the remainder <u>calculated together with the employee’s member’s retirement interest in the retirement component</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]-employee’s member’s total retirement interest in the vested component, <u>calculated together with the employee’s member’s total interest retirement in the retirement component,</u> does not exceed R165 000, where the <u>employee member</u> is deceased or where the <u>employee member</u> elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund: <u>Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account—;</u>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	preservation fund, provident preservation fund or a retirement annuity fund;”		
1(1)(r)	<p>by the addition in subsection (1) in the definition of “provident fund” of the following further proviso: <u>“: Provided further that the Commissioner may approve or recognise a fund contemplated in—</u> <u>(iii) 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—</u> <u>(aa) for the creation of the “savings component”, “retirement component” and “vested component” as defined in section 1;</u> <u>(bb) that an employee shall, prior to his or her retirement date, be entitled to the payment of an amount from the retirement component, 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> <u>(AAA) working as contemplated in paragraph (i) of the definition of “visa”</u></p>	<p>Same comment as ceasing to be a resident in section 1(1)(f) of the definition of pension fund.</p> <hr/> <p>Refer to comments on 1(1)(e)</p> <hr/> <p>Omission of subpara (bb)(CC) –</p> <p>Legal nature of the problem and factual description</p> <p>Paragraph (CC) appears to have been omitted, which would result in individuals who emigrated based on the old SARB rules not being entitled to access a lump sum benefit from their vested and retirement components.</p> <p>The nature of the business / persons affected</p> <p>Members of funds who emigrated based on old SARB rules and wish to access a lump sum withdrawal will not be able to do so if this provision is omitted.</p>	<p>Same comment as ceasing to be a resident in section 1(1)(f) of the definition of pension fund.</p> <hr/> <p>Include subpara (CC). Reference to paragraph (c) in the hanging paragraph under subparagraph (bb) is incorrect and should be replaced with a reference to paragraph (d).</p> <p><u>(bb) that a member may an employee shall, prior to his or her retirement date, be entitled to elect to receive the payment of an amount from the retirement component, deemed to be paid as a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</u> (BB) departed from the Republic at the expiry of a visa obtained for the purposes of— (AAA)... (BBB)... <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</u></p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>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></p> <p><u>(iv) 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 an employee’s interest in the vested component may be commuted for a single payment and that the remainder, calculated together with the member’s interest in the retirement component, 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 employee’s interest in the vested component, calculated together with the employee’s interest in the retirement component, 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.”;</u></p>	<p>Legal nature and description of the problem</p> <p>It is stipulated in paragraph (iv) of the final proviso of the definition of “provident fund” that “not more than one-third of an employee’s interest in the vested component</p>	<p><u>application 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></p> <p>paragraph (a), (b) or (d)(e) 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 member’s an employee’s interest in the vested component may be commuted for a single payment and that the remainder, calculated together with the member’s interest in the retirement component, 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 employee’s member’s total interest in the vested component, calculated together with the employee’s member’s total interest in the retirement component, does not exceed R165 000, where the employee member is deceased or where the employee member elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or retirement annuity fund;”</p> <p>So as to make it clear that T-day vested rights are protected, “one-third of an employee’s interest in the vested component” and “two-thirds of the</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>may be commuted for a single payment and that the remainder, calculated together with the member’s interest in the retirement component, must be paid in the form of an annuity ... except where two-thirds of the employee’s interest in the vested component, calculated together with the employee’s interest in the retirement component, does not exceed R165 000”.</p> <p>The member’s vested component includes both T-day vested and non-vested benefits. The reference to “<i>one-third of an employee’s interest in the vested component</i>” and “<i>two-thirds of the employee’s interest in the vested component</i>” does therefore not make provision for the fact that T-day vested benefits remain protected under the new regime.</p> <hr/> <p>Legal nature and description of the problem</p> <p>It is stipulated in paragraph (iv) of the final proviso of the definition of “provident fund” that a retiring member does not have to purchase an annuity “<i>where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund</i>”. The reference to a transfer to a provident fund would seem to be a mistake, and the reference should be to a transfer to a provident preservation fund.</p>	<p><i>employee’s interest in the vested component</i>” should be “<i>one-third of an employee’s <u>retirement interest in the vested component</u></i>” and “<i>two-thirds of the employee’s <u>retirement interest in the vested component</u></i>”.</p> <p>The reason for the inclusion of the term “retirement interest” is that T-day vested benefits are excluded from the calculation of “retirement interest” in the various fund definitions in the Income Tax Act. Reference to “the member’s retirement interest in the vested component” would accordingly be to the T-day non-vested portion of the vested component, which would make it clear that T-day vested rights are still protected.</p> <hr/> <p>“where the employee elects to transfer the retirement interest to a pension preservation fund, provident fund or retirement annuity fund” should be “where the employee elects to transfer the retirement interest to a pension preservation fund, provident <u>preservation</u> fund or retirement annuity fund”.</p>
1(1)(s)	by the substitution in subsection (1) in the definition of “ provident preservation fund ” for item (aa) of paragraph (a)(i) of the proviso of the following item:	<p>Same as definition of pension preservation fund.</p> <p>Legal nature and description of the problem</p>	<p>“to the member’s savings component and retirement component in this fund” should be “to</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>“(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, <u>including lump sums transferred from the member’s vested component, savings component and retirement component in the previous fund to the member’s savings component and retirement component in this fund;</u>”;</p>	<p>Provision is made in item (aa) of paragraph (a)(i) of the proviso to the definition of “provident preservation fund” for “<i>lump sums transferred from the member’s vested component, savings component and retirement component in the previous fund to the member’s savings component and retirement component in this fund</i>”. The omission of a reference to the vested component in the provident preservation fund would seem to be a mistake.</p>	<p>the member’s <u>vested component</u>, savings component and retirement component in this fund”.</p>
1(1)(t)	<p>by the substitution in subsection (1) in the definition of “provident preservation fund” for item (bb) of paragraph (a)(ii) of the proviso of the following item: “(bb) if the member elected to have any lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to [that] this pension preservation fund and who made this election while they were members of that other fund, <u>including lump sums transferred from the member’s vested component, savings component and retirement component in the previous fund to the member’s savings component and retirement component in this fund;</u>”;</p>	<p>Same as definition of pension preservation fund.</p> <hr/> <p>Legal nature and description of the problem</p> <p>Item (bb) of paragraph (a)(ii) of the proviso to the definition of “provident preservation fund” refers to a “<i>lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule transferred to this pension preservation fund</i>”. As one is dealing with the definition of “provident preservation fund”, the reference to an amount “<i>transferred to this pension preservation fund</i>” is clearly not correct.</p> <hr/> <p>Legal nature and description of the problem</p> <p>Provision is made in item (bb) of paragraph (a)(ii) of the proviso to the definition of “provident preservation fund” for “<i>lump sums transferred from the member’s vested</i></p>	<p>“transferred to this pension preservation fund” should be “transferred to this <u>pension provident</u> preservation fund”.</p> <hr/> <p>“to the member’s savings component and retirement component in this fund” should be “to the member’s <u>vested component</u>, savings component and retirement component in this fund”.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p><i>component, savings component and retirement component in the previous fund to the member's savings component and retirement component in this fund". The omission of a reference to the vested component in the provident preservation fund would seem to be a mistake.</i></p>	
1(1)(u)	<p>by the substitution in subsection (1) in the definition of "provident preservation fund" for subparagraph (v) of paragraph (a) of the proviso 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 provident preservation fund and who made the election while they were members of that other fund, <u>including lump sums transferred from the member's vested component, savings component and retirement component in the previous fund to the member's savings component and retirement component in this fund;</u> or";</p>	<p>Same as definition of pension preservation fund.</p> <hr/> <p>Legal nature and description of the problem</p> <p>Provision is made in subparagraph (v) of paragraph (a) of the proviso to the definition of "provident preservation fund" for "<i>lump sums transferred from the member's vested component, savings component and retirement component in the previous fund to the member's savings component and retirement component in this fund</i>". The omission of a reference to the vested component in the provident preservation fund would seem to be a mistake.</p>	<p>"to the member's savings component and retirement component in this fund" should be "to the member's <u>vested component</u>, savings component and retirement component in this fund".</p>
1(1)(v)	<p>by the substitution in subsection (1) in the definition of "provident preservation fund" for the words preceding subparagraph (i) of paragraph (b) of the proviso of the following words: "payments or transfers to the fund in respect of a member are limited to any</p>	<p>Same as definition of pension preservation fund.</p>	<p>Same as definition of pension preservation fund.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>amount <u>allocated to the vested component, savings component or retirement component or an amount contemplated 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—</u>”;</p>		
1(1)(x)	<p>by the substitution in subsection (1) in the definition of “provident preservation fund” for subparagraph (ii) of paragraph (c) of the proviso of the following subparagraph: “(ii) a member shall, prior to his or her retirement date, be entitled to the payment of— <u>(aa)</u> a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member— [(aa)] (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 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 the currency on or before 28 February 2022; [or]</p>	<p>Same comment regarding ceasing to be a resident as in section 1(1)(l) of the definition of pension preservation fund.</p> <hr/> <p>Legal nature and description of the problem</p> <p>Paragraph (c)(ii)(bb) of the proviso to the definition of “provident preservation fund” makes provision for the payment of an amount from the vested component on cessation of residence or emigration. This creates the impression that a member of a provident preservation fund is only entitled to the payment of an amount from the vested component on cessation of residence or emigration.</p>	<p>Same comment regarding ceasing to be a resident as in section 1(1)(l) of the definition of pension preservation fund.</p> <hr/> <p>It should be clarified that paragraph (bb) only applies to a payment from the vested component in circumstances where the member has already received his/her once-off withdrawal.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>(b) a person who is not resident for an uninterrupted period of three years or longer on or after 1 March 2021; or</p> <p>[(bb)] (c) departed from the Republic at the expiry of a visa obtained for the purposes of—</p> <p>(AA) as contemplated in paragraph (i) 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><u>(bb) an amount from the retirement component or vested component, 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> <p><u>(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</u></p> <p><u>(B) departed from the Republic at the expiry of a visa obtained for the purposes of—</u></p> <p><u>(AA) working as contemplated in paragraph (i) of the definition of “visa” in section 1 of the</u></p>		

Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>Immigration Act, 2002 (Act No. 13 of 2002); or</u> <u>(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; or</u> <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 of exchange control in respect of application 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; and</u></p>		
1(1)(y)	<p>by the substitution in subsection (1) in the definition of “provident preservation fund” for paragraph (iii) of the proviso to paragraph (c) of the proviso of the following paragraph: “(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</p>	<p>Same comment as in pension preservation fund- applies to vested component.</p>	<p>Same comment as in pension preservation fund- applies to vested component.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) of the <u>Second Schedule</u> in respect of that transferred amount, except to the extent that it is an amount contemplated in subparagraph (ii) or a <u>savings withdrawal benefit</u>; and”;</p>		
1(1)(z)	<p>by the substitution in subsection (1) in the definition of “provident preservation fund” in paragraph (e) of the proviso for the words preceding the proviso of the following words: “[that] not more than one-third of the [total value] <u>portion of the [retirement] member’s interest in the vested component immediately prior to 1 March 2025</u> may be commuted for a single payment, and that the remainder, <u>calculated together with the member’s interest in the retirement component</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] <u>member’s total interest in their vested component, calculated together with the member’s total interest in their retirement component</u>, does not exceed R165 000, where the member is deceased or where the member elects to transfer the retirement interest to a pension</p>	<p>The vested component does not exist before 1 March 2025 so the wording cannot refer to the vested component prior to that date. Also, this limits the relevant amount to the value of the interest in the vested component immediately prior to 1 March 2025, without making provision for fund return on this amount. It should rather refer to the value of the member’s interest in the vested component (at the time that the member retires).</p> <hr/> <p>Refer to comment on 1(1)(e)</p> <hr/> <p>The amendment also needs to extend to the proviso to refer to the “retirement interest in the vested component”.</p>	<p>by the substitution in subsection (1) in the definition of “provident preservation fund” in paragraph (e) of the proviso for the words preceding the proviso of the following words: “[that] not more than one-third of the [total value] <u>portion of the [retirement] member’s retirement interest in the vested component immediately prior to 1 March 2025</u> may be commuted for a single payment, and that the remainder, <u>calculated together with the member’s retirement interest in the retirement component</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] <u>the member’s total retirement interest in their vested component, calculated together with the member’s total retirement interest in their retirement component</u>, does not exceed R165 000, where the member is deceased or where the member elects to transfer the retirement interest to a pension preservation fund, a provident preservation fund or a retirement annuity fund: ”;</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	preservation fund, a provident preservation fund or a retirement annuity fund: ”;		<u>Provided that in determining the value of the retirement interest in the vested component an amount calculated as follows must not be taken into account:”</u>
1(1)(zB)	by the substitution in subsection (1) in the definition of “retirement annuity fund” for paragraph (a) of the proviso of the following paragraph: “(a) that the fund is a permanent fund <i>bona fide</i> established for the sole purpose of providing life annuities for the members of the fund or annuities for the dependants or nominees of deceased members <u>or for the purpose of providing any benefit contemplated in the “savings withdrawal benefit” in section 1; and</u> ”;	Same comment re “purpose” as above, refer to 1(1)(d).	Same comment re “purpose” as above, refer to 1(1)(d).
1(1)(zC)	by the substitution in subsection (1) of the definition of “retirement annuity fund” for subparagraph (ii) of paragraph (b) of the proviso for the words preceding the proviso of the following words: “that not more than one-third of the [total value of the retirement] member’s interest in the vested component may be commuted for a single payment, and that the remainder, <u>calculated together with the total value of the member’s share standing to the credit of the retirement component,</u> must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of	<p>Legal nature of the problem</p> <p>It states “or where the member elects to transfer the vested component to a retirement annuity fund:”;</p> <p>Nature of the Problem and factual description</p> <p>Why does it state that only the vested component can be transferred? Surely the full fund value should be transferred?</p> <p>One has to transfer the full amount (i.e. all three components simultaneously) to the other fund. Is this saying this is not the case with retirement annuity funds? If so, this is a break from principle.</p>	<p>It should provide that contracts should still be able to be transferred. If they are pre- 1 March 2025, lump sum contracts, they will only have a vested component. If they are post- 1 March 2025 contracts, they have two components. But others that straddle the implementation date will have all three components.</p> <p>Amend –</p> <p>or where the member is deceased or where the member elects to transfer the <u>full fund value or the full value of one or more contracts to another vested component to a</u> retirement annuity fund:</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value <u>of the member's interest in the vested component plus the member's interest in the retirement component</u> does not exceed R165 000, or where the member is deceased <u>or where the member elects to transfer the vested component to a retirement annuity fund:</u> ”;</p>	<p>In a retirement annuity fund different contracts can be transferred to other retirement annuity funds. It needs to be made clear that all the components per contract must be transferred.</p> <hr/> <p>Refer to comments on 1(1)(e)</p>	<p>“that not more than one-third of the [total value of the retirement] member's <u>retirement</u> interest in the vested component may be commuted for a single payment, and that the remainder, calculated together with the total value of the member's <u>retirement interest in share-standing to the credit of</u> the retirement component, 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 <u>member's total retirement value of the member's</u> interest in the vested component plus the member's <u>total retirement</u> interest in the retirement component does not exceed R165 000, or where the member is deceased or where the member elects to transfer the vested component retirement interest to a retirement annuity fund:</p>
1(1)(zD)	<p>by the substitution in subsection (1) in the definition of “retirement annuity fund” for item (dd) of paragraph (b)(x) of the proviso of the following item: “(dd) the payment of— (A) a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member— [(A)](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 of</p>	<p>Legal nature and description of the problem</p> <p>Paragraph (b)(x)(dd)(C) of the proviso to the definition of “retirement annuity fund”, dealing with the payment of a lump sum benefit from the vested component on cessation of residence or emigration, would seem to be unnecessary as subparagraph (B) deals with the payment of a lump sum benefit from both the retirement component and the vested component.</p>	<p>Paragraph (b)(x)(dd)(C) of the proviso to the definition of “retirement annuity fund” should be deleted.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>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]</p> <p>(BB) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; <u>or</u></p> <p>[(B)](CC) departed from the Republic at the expiry of a visa obtained for the purposes of—</p> <p>(AAA) working as contemplated in paragraph (i) 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 section 1 of that Act;</p> <p>(B) <u>an amount from the retirement component and vested component, deemed to be paid as a lump sum</u></p>		

Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule, where a member—</u></p> <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;</u></p> <p><u>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of—</u></p> <p><u>(AAA) working as contemplated in paragraph (i) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</u></p> <p><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; or</u></p> <p><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</u></p>		



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or</u></p> <p><u>(C) an amount from the vested component, 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> <p><u>(AA) a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021;</u></p> <p><u>(BB) departed from the Republic at the expiry of a visa obtained for the purposes of—</u></p> <p><u>(AAA) working as contemplated in paragraph (i) of the definition of “visa” in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or</u></p> <p><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; or</u></p> <p><u>(CC) is a person who is or was a resident who emigrated from the</u></p>		



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>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>		
1(1)(zF)	<p>by the insertion in subsection (1) after the definition of “retirement annuity fund” of the following definition: <u>“retirement component” means a component 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—</u> <u>(a) two-thirds of the total retirement contributions to a pension fund, provident fund or retirement annuity fund by or on behalf of that member on or after 1 March 2025 is allocated to this component: Provided that—</u> <u>(i) in determining the value of the contributions to this component an amount of charges and risk premiums</u></p>	<p>Legal nature of the problem</p> <p>Paragraph (b) only refers to a transfer to preservation funds and not to other types of funds.</p> <p>Nature of the problem and factual description</p> <p>It is uncertain of why paragraph (c), which applies to a transfer to all types of retirement funds is not sufficient and it is uncertain what the need is for paragraph (b).</p> <p>Legal nature of the problem</p> <p>The word “similar” should be replaced.</p> <p>Nature of the Problem and factual description</p> <p>The word “similar” gives rise to uncertainty.</p>	<p>It is proposed that paragraph (b) is deleted as being unnecessary.</p> <p>It should provide the name of the component from which it is being transferred. Change the word “similar” to the name of the component. This will apply to every definition where the word “similar” is used.</p> <p>Substitute the word “similar with “the vested component”, as follows –</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>deductible against such contributions must not be taken into account;</u> (ii) <u>in the case of funds with a defined benefit funding structure, the total value attributed to this component on or after 1 March 2025 is to be determined with reference to two-thirds of the member’s “pensionable service” as contemplated in the rules of that fund on or after 1 March 2025; and</u> (iii) <u>a fund with a defined benefit structure that is unable to allocate contributions as contemplated in paragraph (ii) may allocate contributions utilising a reasonable method of allocation as approved by the Financial Sector Conduct Authority;</u> (b) <u>payments or transfers from a similar component to a pension preservation fund or provident preservation fund by or on behalf that member on or after 1 March 2025 is allocated to this component;</u> (c) <u>any amounts transferred from a similar component of any other pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on or after 1 March 2025 is allocated to this component; and</u> (d) <u>the total value of the member’s interest in the retirement component must be paid in the form of an annuity (including a living annuity), a combination of annuities (including a combination of methods of</u></p>	<p>Legal nature of the problem</p> <p>Paragraph “d” provides for a transfer “<i>where the employee elects to transfer the retirement interest to a pension preservation fund, provident preservation fund or a retirement annuity fund</i>”.</p> <p>It does not include to a pension or provident fund.</p> <p>Nature of the Problem and factual description</p> <p>The Taxation Laws Amendment Bill of 2023 will provide for a retirement interest to be transferred to <u>pension and provident</u> funds too. This RLAB needs to be updated with the new Taxation Laws Amendment Bill.</p> <p>Legal nature of the problem</p> <p>In paragraph (d) it states Provided that this provision shall not apply to....., a “<i>beneficiary fund</i>”, “<i>unclaimed benefit fund</i>” and “<i>pensioner</i>” as defined in section 1 of the Pension Funds Act,</p> <p>Factual description of the problem</p>	<p>(c) any amounts transferred from a similar retirement component of any other pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on or after 1 March 2025 is allocated to this component; and</p> <p>Pension and provident fund should be added to the list of funds to which a retirement interest can be transferred.</p> <p>Amend paragraph to include except, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension fund, provident fund, pension preservation fund, provident preservation fund or a retirement annuity fund</p> <p>Add to the list of exemptions as was set out in the ASISA submission.</p> <p>This same issue also appears in the definition of “savings component”.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>paying the annuity) or a combination of types of annuities except, 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 this provision shall not apply to a “legacy retirement annuity policy” as defined in section 1 (that has been exempted from this provision, subject to the conditions that may be required by the Financial Sector Conduct Authority), a “beneficiary fund”, “unclaimed benefit fund” and “pensioner” as defined in section 1 of the Pension Funds Act, and any person who is or was a member of a provident fund or provident preservation fund and who was 55 years of age or older on 1 March 2021, unless such person has elected to contribute to the retirement component: Provided further that in determining the value of the member’s interest in the retirement component calculated together with two-thirds of the member’s interest in the vested component an amount calculated as follows must not be taken into account:</u></p> <p><u>(i) In the case of a person who is or was a member of a provident fund or provident preservation fund and who was 55 years of age or older on 1 March 2021</u></p>	<p>This list is not comprehensive. In the ASISA submission on the RLAB dated 9 June 2023, in addition to the above, an exemption for the following was also requested:</p> <ul style="list-style-type: none"> • Funds in liquidation, • Dormant/closing funds that have no members, • Pensioner funds, • Funds which have members with unclaimed benefits <p>The above have not all been excluded even though the National Treasury draft Response document and the National Treasury slides presented to the SCOF hearings provided for the exclusion of dormant funds, funds with no active contributing members and funds in liquidation.</p>	
		<p>In relation to subparagraph (d):</p> <p>Refer to comment on 1(1)(e). This definition refers to all types of retirement funds and all references to “employee” should be replaced with “member”.</p>	<p>All references to “employee” should be replaced with “member”.</p>
		<p>First proviso in (d) should apply to the whole of the Retirement Component definition.</p>	<p>First proviso in (d) should apply to the whole of the Retirement Component definition.</p>
		<p>Legal nature of the problem</p>	<p>The proviso needs to be amended as follows:</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>who has elected to contribute to the retirement component,</u> <u>(aa) two-thirds of the members contribution to the vested component in a provident fund or transfers to the vested component in a provident preservation fund on or after 1 March 2025;</u></p>	<p>This is a definition of “retirement component”. It should not include what is in the vested component. The legislation is confusing the obligation to “annuitise” on retirement with the definition of retirement component.</p> <p>The following proviso in (d) should NOT be included in the definition of Retirement Component” <i>“Provided further that in determining the value of the member’s interest in the retirement component calculated together with two-thirds of the member’s interest in the vested component an amount calculated as follows must not be taken into account:</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 was 55 years of age or older on 1 March 2021 who has elected to contribute to the retirement component,</i> (aa) <i>two-thirds of the members contribution to the vested component in a provident fund or transfers to the vested component in a provident preservation fund on or after 1 March 2025;”</i></p> <p>Nature of the Problem and factual description</p> <p>The definition of retirement component should not include what can happen to the vested component. This proviso needs to be redrafted to acknowledge that it is only the members contributions and transfers after 1 March that will be part of the retirement component.</p> <p>The legislation is confusing the obligation to “annuitise” on retirement with the definition of the retirement</p>	<p>Provided further that in determining the value of the member’s interest in the retirement component calculated together with two-thirds of the member’s interest in the vested component 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 was 55 years of age or older on 1 March 2021 who has elected to contribute to the retirement component, (aa) two-thirds of the members <u>contributions to the fund plus transfers to the retirement component on or after 1 March 2025;</u> (bb) with the addition of any other amount credited to the member’s individual account or minimum individual reserve of the retirement component on or after 1 March 2025; 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);”;</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>component. The nature of the retirement component is for it to be annuitised.</p> <p>The obligation to annuitise BOTH the retirement component and 2/3 of the vested component must be contained in the definitions of the different retirement funds and not in the definition of the retirement component. The retirement component should only provide for what is permitted in the retirement component.</p> <p>Where a member who was a member of a provident fund elects to be part of the two-pot system after 1 March 2025, this clause should recognize that those members will participate in the retirement component in the same way as all other members who participate in the retirement component.</p> <p>Anything that prescribes what happens to the vested component should be in the definition of vested component and not the definition of retirement component.</p>	
		<p>In relation to subparagraphs (i)(aa), (bb) and (cc) of the final proviso</p> <p>The wording may create some confusion. As per the harmonisation amendments, a member's vested rights are not taken into account when determining whether the member's retirement interest falls below the de minimis. Accordingly, for members who were 55 and older on 1 March 2021, the total amount to the credit of</p>	<p>Provided further that in determining the value of the member's interest in the retirement component calculated together with two-thirds of the member's interest in the vested component 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 was 55 years of age</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>the vested component should not be taken into account. This is because the vested component would include all contributions to and growth in the fund prior to implementation, as well as any contributions to and growth in the fund after implementation but prior to electing to contribute to the retirement and savings components.</p> <p>It is also important to exclude the vested rights of provident and provident preservation fund members who were under 55 on 1 March 2021 when calculating whether the member’s total retirement interest falls below the de minimis, as is currently the case.</p>	<p>or older on 1 March 2021 who has elected to contribute to the retirement component, <u>that member’s interest in the vested component.</u></p> <p>(aa) two-thirds of the members contribution to the vested component in a provident fund or transfers to the vested component in a provident preservation fund on or after 1 March 2025;</p> <p>(bb) with the addition of any other amount credited to the member’s individual account or minimum individual reserve of the vested component in the provident fund or provident preservation fund on or after 1 March 2025;</p> <p>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><u>(ii) In the case of a person was a member of a provident fund or provident preservation fund and who was 54 years of age or younger on 1 March 2021 –</u></p> <p><u>(aa) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;</u></p> <p><u>(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 as a result of the value of the member’s individual account or minimum individual reserve on 1 March 2021; and</u></p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
			<p><u>(cc) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in item (aa) or amounts credited contemplated in subitem (bb), reduced proportionally by an amount permitted in terms of the Pension Funds Act to be deducted from the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021:</u></p>
1(1)(zG)	<p>by the substitution in subsection (1) for the definition of “retirement interest” of the following definition: “ “retirement interest” means— (a) <u>in relation to any period prior to 1 March 2025, 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 fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or</u> (b) <u>in relation to any period commencing on 1 March 2025, 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 comprising the member’s</u></p>	<p>Legal nature of the problem</p> <p>There does not need to be a distinction between pre- 1 March 2025 and post- 1 March 2025 as this is unnecessarily confusing. There needs only to be one definition of retirement interest.</p> <p>Nature of the Problem and factual description</p> <p>A member’s retirement interest is a term that is defined and is understood to mean the fund value that exists in a fund when a member is entitled to retire from the fund or transfer to a preservation fund or retirement annuity fund (and in terms of the Taxation Laws Amendment Bill of 2023, is entitled to transfer to a pension or provident fund).</p> <p>The introduction of the two-pot system will not require any changes to the definition of retirement interest.</p> <p>It is not necessary to refer to paragraph 2(1)(c) and 2(1)(d) in the definition of retirement interest.</p>	<p>Any reference to paragraph 2(1)(d) must be deleted.</p> <p>(b) should be deleted</p> <p>The definition should be amended as follows retirement interest” means— (a) 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 fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or (b) Paragraph (b) to be deleted</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>interest in the savings component, member’s interest in the retirement component and member’s interest in the vested component, on the date on which he or she elects to retire or transfer to a pension preservation fund, provident preservation fund or retirement annuity fund as contemplated in paragraph 2(1)(c) of the Second Schedule or transfer to a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as contemplated in paragraph 2(1)(d) of the Second Schedule.”;</u></p>	<p>Those paragraphs will state themselves to apply to a “Retirement interest “. Retirement interest is a definition and not an enabling provision.</p> <p>The current definition does not refer to paragraphs in the Second Schedule. This does not need to change in the two-pot system.</p> <p>Paragraph 2(1)(d) of the Second Schedule in particular is a concern. It states “any amount transferred for the benefit of that person within the same fund as contemplated in paragraph 6B(a), 6B(b) or 6B(f) and any amount transferred on termination of membership in that fund or as contemplated in paragraph 2(1)(b)(iA) to another fund for the benefit of that person as contemplated in paragraph 6B(c), 6B(d), or 6B(e), less any deductions permitted under the provisions of paragraph 6B.”</p> <p>Paragraph 2(1)(d) refers to internal transfers and divorce orders under paragraph 2(1)(b)(iA). A retirement interest is the full fund value and cannot refer to a situation of an internal component transfer which would only be a vested component to retirement component transfer or a savings to retirement component transfer.</p> <p>It also cannot refer to divorce orders which are currently not available from a retirement interest.</p>	
1(1)(zH)	<p>by the insertion in subsection (1) after the definition of “return of capital” of the following definitions:</p>	<p>Legal Nature of the problem</p> <p>Para(a)</p>	<p>Vested component must be changed to “each contract in the fund”.</p> <p>Amend:</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>“savings component” means a component 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—</u></p> <p><u>(a) a one-off amount of 10 per cent of the total value of the vested component fund as at 28 February 2025, as contemplated in paragraph (a) of the definition of “vested component”, limited to R30 000, is allocated to this component on or after 1 March 2025: Provided further that—</u></p> <p><u>(i) the amount may be determined on or after 1 March 2025, and the allocation must be backdated to that date; and</u></p> <p><u>(ii) in the case of any person who is or was a member of a provident fund or provident preservation fund and who is or was 54 years of age or younger on 1 March 2021, the one-off amount is to be calculated proportionally from that member’s retirement interest in that provident fund or provident preservation fund on 28 February 2021 and the increase in the value up to and including 28 February 2025 from that fund;</u></p>	<p>“a one-off amount of 10 per cent of the total value of the vested component as at 28 February 2025,”</p> <p>In addition, the reference should be to the value of each contract in the fund.</p> <p>Funds have members who have more than one contract in the same fund. It is possible that these contracts could be administered across different administration platforms and by different administrators.</p> <p>Para (a) prescribes the calculation of the seeding amount and states that it is limited to a monetary amount. The legislation does not set out clearly that this monetary amount applies per contract rather than on a member level. It is important that clarity should be provided on this.</p> <p>To apply the monetary limit on a member level in instances where members have more than one contract will not only be administratively challenging, it is also unclear as to how the seeding amount should be apportioned between these various contracts in such instances where the monetary limit has kicked in (e.g. should it be split proportionally between the contracts or should the total seeding amount be applied to only one contract).</p> <p>It is our understanding that the vested, retirement and savings component exist on a contract level and not on a member level. One example that leads to such understanding is para (d) in the definition of retirement component which states “<i>the total value of the member’s interest in the retirement component must be paid in the</i></p>	<p>“a one-off amount of 10 per cent of the value of each contract in the fund vested component as at 28 February 2025, as contemplated in paragraph (a) of the definition of “vested component”, limited to R30 000, is allocated to this component on or after 1 March 2025.”</p> <p>Alternatively:</p> <p>a one-off amount of 10 per cent of the value of each contract in the fund vested component as at 28 February 2025, as contemplated in paragraph (a) of the definition of “vested component”, limited to R30 000, is allocated to this component on or after 1 March 2025: Provided further that—</p> <p>(i) the amount may be determined on or after 1 March 2025, and the allocation must be backdated to that date; and</p> <p>(ii) in the case of any person who is or was a member of a provident fund or provident preservation fund and who is or was 54 years of age or younger on 1 March 2021, the one-off amount is to be calculated proportionally from that member’s retirement interest in that provident fund or provident preservation fund on 28 February 2021 and the increase in the value up to and including 28 February 2025 from that fund;</p> <p>Alternatively:</p> <p>“a one-off amount of 10% of the total value of the vested component as at 28 February 2025, as contemplated in paragraph (a) of the definition of</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>(b) one-third of the total retirement contributions to a pension fund, provident fund or retirement annuity fund by or on behalf of that member on or after 1 March 2025 is allocated to this component: Provided that—</u></p> <p><u>(i) in determining the value of the contributions to this component an amount of charges and risk premiums deductible against such contributions must not be taken into account;</u></p> <p><u>(ii) in the case of funds with a defined benefit funding structure, the total value attributed to this component on or after 1 March 2025 is to be determined with reference to one-third of the member’s “pensionable service” as contemplated in the rules of that fund on or after 1 March 2025; and</u></p> <p><u>(iii) a fund with a defined benefit structure that is unable to allocate contributions as contemplated in subparagraph (ii) may allocate contributions utilising a reasonable method of allocation as approved by the Financial Sector Conduct Authority;</u></p> <p><u>(c) payments or transfers from a similar component to a pension preservation fund or provident preservation fund by or on behalf of that member on or after 1 March 2025 is allocated to this component;</u></p> <p><u>(d) any amounts transferred from a similar savings component of any other</u></p>	<p><i>form of an annuity</i>”. This implies that if the components exist on a member level, and a member with multiple contracts wants to retire, he / she should retire from all the contracts in the fund at the same time. It is common practice in the industry (referred to as staggered retirement) that it is not necessary for such members to retire from all the contracts at the same time.</p> <p>We therefore conclude that if para (a) refers to “<i>one-off amount of 10 per cent of the total value of the vested component ... limited to R30 000</i>” then it refers to the vested component of that specific contract and that the monetary limits apply to the seeding amount calculation for that specific contract.</p> <p>We believe that this should be clarified in the legislation.</p> <p>In the Treasury response document to Parliament the following was stated: “Comment: It is the understanding that the policy intent is to allow for the existence of the various components on both a fund and per contract basis (where applicable). If this understanding is correct, then the legislation needs to ensure that where applicable the existence of the various components on a per contract per component basis is fully catered for. Treasury Response: Accepted. Amendments will be made to the draft legislation to ensure that the policy intent that the various components can exist on a per contract basis is fully expressed.”</p> <hr/> <p>Nature of the Problem and factual description</p>	<p>“vested component is allocated to this component on or after 1 March 2025: Provided further that-</p> <p>(i) the amount so allocated is limited to R30000;</p> <p>(ii) where a member has multiple contracts in a fund, the limit contemplated in subparagraph (i) apply per such contract;”</p> <p><i>Renumber existing subparagraphs.</i></p> <p>Alternatively: add another proviso (iii) to paragraph (a): <u>“and (iii) if the vested component consists of more than one contract, that the 10% and R30 000 limit apply per such contract.”</u></p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on or after 1 March 2025 are allocated to this component if the member’s total interest in that fund is transferred in terms of the rules of the fund;</u></p> <p><u>(e) the member may elect to allocate the value of the member’s interest in this component into the member’s retirement component in that fund;</u></p> <p><u>(f) the member’s interest in this component or portion thereof may be paid in the form of a savings withdrawal benefit; and</u></p> <p><u>(g) on the death of the member or former member, or on retirement of the member, the member’s interest in this component may on election of the member or nominee be—</u></p> <p><u>(i) on the death of the member paid to a nominee or dependant of the deceased member or former member;</u></p> <p><u>(ii) on retirement, to the retired member and is deemed to be 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></p>	<p>The vested component did not exist on 28 February 2025. It was the whole value in the fund which became the vested component only on 1 March 2025.</p> <p>Legal nature and description of the problem</p> <p>It is stipulated in paragraph a(ii) of the definition of “savings component” that “in the case of any person who is or was a member of a provident fund or provident preservation fund and who is or was 54 years of age or younger on 1 March 2021, the one-off amount is to be calculated proportionally from that member’s retirement interest in that provident fund or provident preservation fund on 28 February 2021 and the increase in the value up to and including 28 February 2025 from that fund”.</p> <p>It is presumed that the intention is to say that the seed capital must be allocated proportionally from the member’s T-day vested and non-vested benefits. The T-day vested benefit is however not the “retirement interest in that provident fund or provident preservation fund on 28 February 2021”, but includes growth on this amount from 1 March 2021 onwards. The T-day non-vested benefit is also not “the increase in the (1 March 2021) value up to and including 28 February 2025”. The T-day non-vested benefit is only comprised of contributions from 1 March 2021 plus fund return.</p> <p>It is also not correct to state that the seeding capital must be allocated proportionally from the member’s “retirement interest” as “retirement interest” is defined as</p>	<p>It is suggested that paragraph (a)(ii) be amended as follows:</p> <p>“in the case of any person who is or was a member of a provident fund or provident preservation fund and who is or was 54 years of age or younger on 1 March 2021, the one-off amount is to be calculated proportionally from <u>the amount excluded from the value of the retirement interest in terms of the definitions of “pension fund”, “provident fund”, “pension preservation fund”, “provident preservation fund” and “retirement annuity fund” and the amount not so excluded that member’s retirement interest in that provident fund or provident preservation fund on 28 February 2021 and the increase in the value up to and including 28 February 2025 from that fund;</u>”</p> <p>The above pre-supposes acceptance of our proposal that the current definition of “retirement interest” should remain and should not be amended is set out in the Bill.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>Provided further that this definition shall not apply to a “legacy retirement annuity policy” as defined in section 1, that has been approved for exemption by the Financial Sector Conduct Authority, a “beneficiary fund”, “unclaimed benefit fund” and “pensioner” as defined in section 1 of the Pension Funds Act, and any 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, unless such person has elected to contribute to the “savings component”;</u></p>	<p>the fund value on the date on which the member “<i>elects to retire</i>”.</p> <p>The definition should exclude all types of funds and members of funds that are excluded from the application of the two-pot system.</p> <p>Legal nature of the problem</p> <p>It is uncertain whether “(a)(i) <i>the amount may be determined on or after 1 March 2025, and the allocation must be backdated to that date</i>” means that the value on 28 February 2025 includes contributions which should have been paid into the fund by that date but were paid in later and whether the fund value on 28 February 2025 for the purposes of seed capital includes contributions which are paid in late but are part of the fund value for the purposes of calculating the seed capital. Clarification is requested.</p> <p>Nature of the problem and factual description</p> <p>In the previous draft of the Bill it provided for seed capital to be determined on 29 February 2024 which appeared to exclude contributions which were paid in late for the purposes of calculating seed capital. However, these contributions would be allocated to the vested component when they were paid in by employers later on. It is unclear from the current wording whether the change of drafting is conveying a different intention.</p>	<p>The definition should exclude all types of funds and members of funds that are excluded from the application of the two-pot system.</p> <p>The wording needs to clarify whether February contributions which are paid in after 1 March must form part of the fund value for the purposes of calculating the seed capital or whether the seed capital must be calculated on 28 February 2025, excluding amounts credited later, or whether there is administrative discretion.</p> <p>Wording should clarify that the amount in the fund at implementation date be used to calculate seeding and that seeding be effective on 1 March. If National Treasury allows for seeding to be determined after 1 March, there must be a deadline in place so that all funds have determined the seeding amount within a reasonable timeframe. It is proposed that the deadline be 12 months after implementation date.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>Legal description of the problem</p> <p>Para (a)(ii) - “in the case of any person who is or was a member of a provident fund or provident preservation fund and who is or was 54 years of age or younger on 1 March 2021, the one-off amount is to be calculated proportionally from that member’s retirement interest in that provident fund or provident preservation fund on 28 February 2021 and the increase in the value up to and including 28 February 2025 from that fund;” This describes only the vested portion. It has not described the non-vested portion.</p> <p>In addition, the term “retirement interest” is a defined term which assumes the person may already retire from the fund.</p> <p>Nature of the problem and factual description</p> <p>The intention of this paragraph is to apportion the seed capital between the portion of a member's vested benefit and the member's portion of non-vested benefits of provident fund members who were under age 55 on 1 March 2021.</p> <p>The vested benefit of provident fund members who were under age 55 on 1 March 2021 is the fund value which existed on that day plus all fund return on that value going forward. That is the amount of the vested benefit portion.</p>	<p>The legislation needs to be amended to show the apportionment.</p> <p>(ii) In the case of any person who is or was a member of a provident fund or provident preservation fund and who is or was 54 years of age or younger on 1 March 2021, the one-off amount is to be calculated proportionally <u>between that member's fund value</u> in that provident fund or provident preservation fund on 28 February 2021 and including the increase in the value up to and including 28 February 2025 from that fund from that member's retirement interest and the increase in the value up to and including 28 February 2025 from that fund; <u>and the value of contributions which were received on or after 1 March 2021 and fund return on those amounts.</u></p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		Contributions after 1 March 2021 and transfers into the fund and fund return on these amounts form the non-vested benefit. The allocation should be determined proportionately between the two. Transfers in may consist of vested and unvested benefits.	
		This is a restatement of the concern regarding paragraph (c) in the definition of retirement component which only deals with transfers to preservations funds. (d) includes all the funds.	
		<p>Legal Nature of the problem</p> <p>Restatement of the concern regarding the words “similar component”.</p>	<p>Amend as follows -</p> <p>“any amounts transferred from a similar savings component of any other pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on or after 1 March 2025 are allocated to this component if the member’s total interest in that fund is transferred in terms of the rules of the fund.”</p>
		<p>Legal Nature of the problem</p> <p>In para (g), why are the words “former member” included? How does that fit into two-pot?</p>	<p>Proposal:</p> <p>The words “or former member” to be deleted.</p>
		<p>Legal nature of the problem</p> <p>Death and retirement are dealt with in the same clause. Why is it necessary to deal with death in the definition of savings component? Clause clumsy and should be redrafted.</p>	<p>Proposal</p> <p>(g) On the death of the member or former member, the member’s interest in this component may on election of the member or nominee be—</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>(g) on the death of the member or former member, or on retirement of the member, the member’s interest in this component may on election of the member or nominee be—</p> <p>(i) on the death of the member paid to a nominee or dependant of the deceased member or former member;</p> <p>(ii) on retirement, to the retired member and is deemed to be 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>It is assumed that the savings component can be annuitised on retirement and this falls under the general provisions of the Act.</p>	<p>on the death of the member paid to a nominee or dependant of the deceased member and in the absence of a nominee or dependant, to the deceased’s estate and is deemed to be as a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule:</p> <p>(h) <u>On retirement of the member the member’s interest in this component may on election of the member, be paid on retirement;</u> to the retired member as and is deemed to be a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule</p>
		<p>Legal nature of the problem and factual description</p> <p>Treatment of the savings component on death of the member -</p> <p>In National Treasury’s responses to public comments it states that “Amendments will be made to the draft legislation to ensure that the ability [of death benefit beneficiaries] to receive an annuity is not lost.” As previously stated, it is important for the member’s total retirement interest in the fund to be dealt with as a single benefit payable in accordance with section 37C of the Pension Funds Act. As death benefits are adequately</p>	<p>Proposal</p> <p>(g) on the death of the member or former member, or on retirement of the member, the member’s interest in this component may on election of the member or nominee be—</p> <p>(i) on the death of the member paid to a nominee or dependant of the deceased member or former member;</p> <p>(ii) on retirement,</p> <p><u>(i) be paid</u> to the retired member and is deemed to be a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule; and</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>dealt with in section 37C of the Pension Funds Act and the Second Schedule, it is not necessary to deal with the consequences of death in this definition.</p> <p>The above comment applies equally to a retiring member’s right to receive the amount in the savings component in the form of an annuity. It is therefore also suggested that the additional wording dealing with how any portion of the savings component that is not taken as a lump sum should be treated should be retained. Amendments have been proposed.</p>	<p><u>(ii) Any portion of the member’s interest that is not paid as contemplated in (i) must be added to the amount that is available to be paid as an annuity or a combination of annuities as contemplated in paragraph (d) of the definition of “retirement component”; to the retired member and is deemed to be 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></p>
		<p>Legal nature of the problem</p> <p>As stated in the definition of retirement component above, this list is not comprehensive. In the ASISA submission on the RLAB dated 9 June 2023, in addition to the above, an exemption for the following was also requested:</p> <ul style="list-style-type: none"> • Funds in liquidation, • Dormant/closing funds that have no members, • Pensioner funds, • Funds which have members with unclaimed benefits <p>The above have not all been excluded even though the National Treasury draft Response document and the National Treasury slides presented to the SCOF hearings provided for the exclusion of dormant funds, funds with no active contributing members and funds in liquidation.</p>	<p>Add the list of exemptions as was set out in the ASISA submission.</p>
		<p>Legal nature and description of the problem</p>	



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>While it is understood that the savings component can be taken as either a lump sum or an annuity on retirement, for the sake of absolutely clarity, an amendment to para (g) could be made to make this clear.</p> <p>Legal nature and description of the problem</p> <p>The final proviso allows for members who were age 55 and older on T-day (1 March 2021) to opt in to contributing to the savings component, but does not provide for:</p> <ul style="list-style-type: none"> (a) A timeframe within which such election must be made; or (b) How and when seeding should be determined in respect of such members who elect to opt-in. 	<p>Amend paragraph (g) to make it clear that on retirement, the savings component can be taken either as a lump sum, or all or part can be taken as an annuity.</p> <p>Proposal</p> <p>Provided further that this definition shall not apply to a “legacy retirement annuity policy” as defined in section 1, that has been approved for exemption by the Financial Sector Conduct Authority, a “beneficiary fund”, “unclaimed benefit fund” and “pensioner” as defined in section 1 of the Pension Funds Act, and any 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, unless such person has elected to contribute to the “savings component” <u>within 12 months of 1 March 2025, provided further that where such member has elected to contribute to the “savings component”, a one-off amount of 10 per cent of the member’s vested component on the last day on the month in which they made such election, limited to R30 000, is allocated to this component.</u></p>
1(1)(zJ)	<p>by the insertion in subsection (1) after the definition of “Value-Added Tax Act” of the following definition: “vested component” means a component <u>established in terms of the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund</u></p>	<p>Legal Nature of the problem</p> <p>Paragraph (b) states: “no contributions may be made to this component on or after 1 March 2025, 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</p>	<p>Paragraph (b) must be amended as follows</p> <p>“no contributions may be made to this component on or after 1 March 2025, except in the case of a person who was a member of a provident fund</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>or retirement annuity fund for a person who is a member of that fund: Provided that the rules of the fund provide that—</u></p> <p><u>(a) the member’s interest in this component, after taking into account the allocation of the amount contemplated in paragraph (a) of the definition of “savings component”, is subject to and must be paid in accordance with the rules of the fund that exist immediately prior to 1 March 2025;</u></p> <p><u>(b) no contributions may be made to this component on or after 1 March 2025, 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: Provided that where the above-mentioned member has elected to make contributions on or after 1 March 2025, that member may not be allowed to make contributions to the savings component or the retirement component;</u></p> <p><u>(c) the member may, in accordance with the rules of the fund that exist immediately prior to 1 March 2025, elect to transfer the value of this component into the member’s vested component of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</u></p> <p><u>(d) the member may elect to transfer the value of this component into the</u></p>	<p>or older on 1 March 2021: Provided that where the above-mentioned member has elected to make contributions to this component or after 1 March 2025, that member may not be allowed to make contributions to the savings component or the retirement component;</p> <p>This is in conflict with the draft National Treasury Response comments document and the definition of savings component.</p> <p>Nature of the problem and factual description</p> <p>It is not an “opt in” to the vested component. Remaining in the vested component is automatic and it is an “opt in” to the savings and retirement components. It should be made clear that these members’ contributions will automatically be allocated to the vested component unless they opt in to the two-pot system.</p> <p>Legal nature of the problem</p> <p>Drafting clarification in paragraph (c) and (d) and (e)</p> <p>Nature of the problem and factual description</p> <p>Paragraphs (c) and (d) need to clarify that it applies on termination of membership Paragraph (e) needs to clarify that it is of the same fund</p>	<p>and is still a member of the same provident fund and who was 55 years of age or older on 1 March 2021 Provided that where the above-mentioned member has <u>not</u> elected to make contributions on or after 1 March 2025, that member may not be allowed to make contributions to the savings component and the retirement component on or after 1 March 2025.</p> <p>The following paragraphs require amendment as follows</p> <p>c) the member may, in accordance with the rules of the fund that exist immediately prior to 1 March 2025, elect to transfer the value of this component into the member’s vested component of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund <u>on termination of membership of the fund;</u></p> <p>(d) the member may elect to transfer the value of this component into the member’s retirement component of another pension fund, pension preservation fund, provident</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>member’s retirement component of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and</u> <u>(e) the member may elect to transfer the value of this component into the member’s retirement component of the same pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.</u></p>		<p>fund, provident preservation fund or retirement annuity fund; <u>on termination of membership of the fund</u> and (e) the member may elect to transfer the value of this component into the member’s retirement component of the <u>same</u> pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund <u>of which he or she is a member;</u></p>
3(1)(c)	<p>by the addition after item (c) of the following item: <u>(d) any amount transferred for the benefit of that person within the same fund as contemplated in paragraph 6B(a), 6B(b) or 6B(f) and</u> <u>any amount transferred on termination of membership in that fund or as contemplated in paragraph 2(1)(b)(iA) to another fund for the benefit of that person as contemplated in paragraph 6B(c), 6B(d), or 6B(e), less any deductions permitted under the provisions of paragraph 6B.</u></p>	<p>Legal nature of the problem</p> <p>Paragraph (d) should be deleted to remove the taxability of “component to component” transfers within the same fund. ASISA has previously submitted that this is unsound in terms of tax law.</p> <p>Paragraph 2(1)(b)(iA) already taxes a divorce award and it is sufficient for the deduction to be included in paragraph 6B. A small amendment to paragraph 2(1)(b)(iA) can be effected but two disparate tax situations should not be in the same paragraph.</p> <p>Nature of the problem and factual description</p> <p>In tax law, to have a taxable event, income must have been received or accrued to the person. Until a member terminates membership of a fund and becomes entitled to a benefit in terms of the fund rules there is no right of accrual. Therefore, there can be no tax accrual. If a member elects to transfer from a savings component to a retirement component or from a vested component to</p>	<p>Delete paragraph 2(1)(d).</p> <p>Paragraph 2(1)(b)(iA) of the Second Schedule to be amended to add sub-paragraph (cc) as follows: <u>any amount transferred for the benefit of a person who is the former spouse of the member as contemplated in paragraph 2(1)(b)(iA) to another fund for the benefit of that person less any deductions permitted under the provisions of paragraph 6B.</u></p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>a retirement component within the same fund. This is merely a book entry (a re-allocation of funds) by the administrator. No amount should accrue to the member. This is similar in concept to when a member of a fund gives an investment switch instruction. In such instances, no amount ever accrues to the member. In addition, the investment returns themselves are exempt from tax. There is no tax event at either the member or the fund level</p> <p>This should be removed from the corresponding deductions in paragraph 6B which are unnecessary and merely cause administrative and systems complexity.</p> <p>It is also not necessary to include divorce awards in a new paragraph 2(d). These are already included in paragraph 2(b)(iA). If a transfer is required to constitute an accrual, an amendment in paragraph 2(b)(iA) should be made.</p> <p>These are different tax situations which should not be in the same section.</p>	
4(1)	<p><u>The Second Schedule to the Income Tax Act, 1962, is hereby amended by the addition after paragraph 6A of the following paragraph:</u> <u>TRANSFER BETWEEN THE COMPONENTS OF THE RETIREMENT SYSTEM: DEDUCTIONS</u> <u>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</u></p>	<p>Legal Nature of the problem</p> <p>As stated above, paragraph 2(1)(d) should be deleted as there should be no tax accrual in the same fund, component to component transfer. No corresponding tax deduction is required. Therefore, both paragraph 6B (a) and 6B (b) should be deleted when paragraph 2(1)(d) is deleted.</p> <p>Nature of the problem and factual description</p>	Delete paragraphs (a) and (b).



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>transferred for the benefit of a person from the—</u> <u>(a) savings component into the member’s retirement component in that same fund;</u> <u>(b) vested component into the member’s retirement component in that same fund;</u> <u>(c) savings component in that fund into the member’s or former spouse of that member’s savings component or member’s or former spouse of that member’s retirement component in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</u> <u>(d) vested component in that fund into the member’s or former spouse of that member’s vested component or member’s or former spouse of that member’s retirement component in another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</u> <u>(e) retirement component into the member’s or former spouse of that member’s retirement component of another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and</u> <u>vested component into the member’s savings component in that same fund for purposes of the allocation as contemplated</u></p>	<p>The comments in respect of paragraph 2(1) (d) are repeated.</p> <hr/> <p>Legal Nature of the problem</p> <p>The provision states the following: “Provided further that any transfers contemplated under item (c), (d) or (e) are only permissible if all the remaining components are transferred into the same transferee fund”. This potentially removes existing rights.</p> <p>Nature of the problem and factual description</p> <p>Currently when a member terminates employment, they are entitled, subject to fund rules, to transfer part of the benefit to more than one fund, such as to both a retirement annuity fund and a preservation fund.</p> <p>The Bill seems to remove such rights by requiring all components to be transferred to the same fund.</p> <p>While it is accepted that no component can be transferred independently from the other components to a different fund, it should be made clear that the member may still transfer a portion of their three components to more than one fund, as long as the proportionate share of every component is transferred to the respective funds.</p>	<hr/> <p>Add the following additional wording after the second proviso –</p> <p>Provided further that any transfers contemplated under item (c), (d) or (e) are only permissible if all the remaining components are transferred into the same transferee fund <u>or a proportionate share of each component is transferred to the same fund where the member is transferring to more than one fund.</u></p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>in paragraph (a) of the “savings component” definition:</u> <u>Provided that any transfers contemplated under item (c), (d) or (e) are only permissible on termination of membership in the transferor fund or as contemplated in paragraph 2(1)(b)(iA): Provided further that any transfers contemplated under item (c), (d) or (e) are only permissible if all the remaining components are transferred into the same transferee fund.</u></p>		



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>Legal Nature of the problem</p> <p>The provision states the following: “Provided further that any transfers contemplated under item (c), (d) or (e) are only permissible if all the remaining components are transferred into the same transferee fund”.</p> <p>This potentially removes existing rights.</p> <p>Nature of the problem and factual description</p> <p>Currently when a member terminates employment, they are entitled, subject to fund rules, to transfer part of the benefit to more than one fund, such as to both a retirement annuity fund and a preservation fund.</p> <p>The Bill seems to remove such rights by requiring all components to be transferred to the same fund.</p> <p>While it is accepted that no component can be transferred independently from the other components to a different fund, it should be made clear that the member may still transfer a portion of their three components to more than one fund, as long as the proportionate share of every component is transferred to the respective funds.</p>	<p>Add the following additional wording after the second proviso –</p> <p>Provided further that any transfers contemplated under item (c), (d) or (e) are only permissible if all the remaining components are transferred into the same transferee fund <u>or a proportionate share of each component is transferred to the same fund where the member is transferring to more than one fund.</u></p>
6(1)	The Fourth Schedule to the Income Tax Act, 1962, is hereby amended in paragraph 2 by the addition after subparagraph (2B) of the following subparagraph:	<p>Legal Nature of the problem</p> <p>This paragraph allows SARS to provide a fixed rate of tax for savings withdrawal benefits. The funds must apply the fixed tax rate that the Commissioner directs. It</p>	This paragraph should be interpreted to allow SARS to issue a flat rate tax table each year without administrators having to apply for and



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p><u>(2C) A pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund that pays a “savings withdrawal benefit” as defined in section 1 shall, when deducting or withholding employees’ tax in respect of that savings withdrawal benefit, apply the fixed tax rate that the Commissioner directs must be used in determining the amount of employees’ tax to be withheld.</u></p>	<p>does not state that a directive must be received on each and every savings withdrawal benefit.</p> <p>It can potentially allow for a fixed rate table to be provided by SARS for administrators to withhold tax on savings withdrawal benefits.</p> <p>Nature of the problem and factual description</p> <p>ASISA members have repeatedly requested SARS to provide a flat rate table or tiered table for the processing of savings withdrawal benefits to ease the administration of these lump sums. In the draft response document, it was indicated that the same system as is currently used for PAYE tax directives in terms of paragraph 2B of the Fourth Schedule (for annuitants with multiple sources of income) will apply.</p> <p>It is unclear how a similar tax directive process will be followed in the case of savings withdrawal benefits. In the case of annuitants with more than one source of income, SARS provides annuity administrators with a flat rate of tax, per annuitant, at the start of a tax year. In that situation, SARS can identify the affected annuitants as well as the annuity administrators who issue the relevant IRP5's/IT3(a)s to the annuitants. SARS also has each affected annuitant's historical financial information which it uses to determine a flat rate of tax to be applied.</p> <p>In contrast, fund members who take savings withdrawal benefits do so on an ad hoc basis. SARS cannot know in advance who will take a savings withdrawal benefit and how much of the savings benefit any member will elect</p>	<p>receive a tax directive for each and every savings withdrawal benefit.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		<p>in any tax year. Therefore, SARS cannot provide personalized flat tax rates in advance to administrators each year as it does with paragraph 2(2B) directives. Therefore, without a flat or tiered rate table, or using the normal PAYE tables, an administrator will have to effectively apply to SARS to receive a tax directive to deduct tax from each and every savings withdrawal benefit requested every year by every member. The current tax directive process for lump sums is consequently envisaged for savings withdrawal benefits. Taking into consideration the significant volumes of savings withdrawal benefits anticipated, the delays in processing and the additional systems development required, to apply for the individual’s tax rate from SARS each year will be extremely burdensome and cause frustration for fund members who are expecting to receive funds which may well be urgently needed.</p>	
7(1)	<p>The Fourth Schedule to the Income Tax Act, 1962, in paragraph 9 is hereby amended by the substitution in subparagraph (3) for item (a) of the following item: “(a) The amount to be deducted or withheld in respect of employees’ tax from any lump sum to which paragraph (d), [or] (e) <u>or any amount to which paragraph (eD)</u> of the definition of “gross income” in section 1 or section 7A applies, <u>or any transfers as contemplated in paragraph 2(1)(d) of the Second Schedule</u>, shall be ascertained by the employer from the Commissioner before paying out such lump sum <u>or before</u></p>	<p>Legal Nature of the problem</p> <p>Firstly, the reference to paragraph 2(1)(d) should be deleted. No accrual has taken place and therefore a tax directive should not be required from the Commissioner for component-to-component transfers within the same fund.</p> <p>Secondly, it is proposed that paragraph (eD) should not require a tax directive.</p> <p>Nature of the problem and factual description</p> <p>Firstly, as stated above, paragraph 2(1)(d) should be deleted. Whenever there is a same fund component to</p>	<p>Firstly, Remove the reference to paragraph 2(1) (d) from this paragraph.</p> <p>Secondly, remove paragraph (eD) from paragraph 9 and adapt paragraph 2C to allow a flat rate of tax or a tax table for different tiers of savings withdrawal benefit values, similar to the retirement fund lump sum withdrawal table.</p> <p>Engagement with NT and SARS with a view to providing a tax table similar to the retirement fund lump sum withdrawal table for the taxation of savings withdrawal benefits.</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
	<p>such transfers are effected, and the Commissioner’s determination of the amount to be so deducted or withheld shall be final.</p>	<p>component transfer, there is a corresponding tax deduction in paragraph 6B. Therefore, it would be preferable for intra-fund transfers (i.e. component to component within the same fund) to be treated as existing re-allocations within a fund, rather than for there to be an accrual and a corresponding deduction.</p> <p>Secondly, NT and SARS are requested to revisit the proposal made in the ASISA submission for a flat rate of tax or alternatively a tax table to be provided by SARS for the deduction of PAYE by administrators from savings withdrawal benefits. The Bill introduces a new paragraph 2C which instructs administrators to deduct a flat rate of tax as determined by the Commissioner. It is submitted that this is potentially an enabling provision for SARS to provide a tax table with a flat rate of tax for administrators to withhold tax on savings withdrawal benefits every year. The flat rate can potentially be progressive at different values of savings withdrawal benefits.</p> <hr/> <p>Legal nature and description of the problem</p> <p>Paragraph 9(3)(a) of the Fourth Schedule requires a tax directive in respect of, inter alia, “any amount to which paragraph (eD) of the definition of “gross income” in section 1 or section 7A applies”, in other words a savings withdrawal benefit. This would seem to contradict paragraph 2(2C) of the Fourth Schedule. Paragraph 2(2C) namely stipulates that the fund must,</p>	<p>Clarification is required on the interplay between paragraphs 9(3)(a) and 2(2C).</p>



Clause number	Wording of the clause in the Bill published on 1 November 2023	Problem(s) – legal nature and factual description	Suggested solution(s) / Clarification required
		when paying a savings withdrawal benefit, “ <i>apply the fixed tax rate that the Commissioner directs must be used</i> ”.	