Tax changes that may affect you

A summary of the final tax bills tabled to parliament with the Medium-Term Budget Policy Statement.

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In this guide

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Overview

2022 final tax bills

We are including a summary of the proposed tax changes contained in the following final bills tabled by the Minister of Finance to Parliament with the Medium-Term Budget Policy Statement (MTBPS).

- Taxation Laws amendment Bill [B26 – 2022], (TLAB)
- Tax Administration Laws Amendment Bill [B27 – 2022], (TALAB)

While these have not been signed into law, they are unlikely to change, so we have summarised the possible impact on you and your wealth.

Two-pot retirement system (this has not been finalised yet)

Following the budget announcement on 23 February 2022 that work will continue to be undertaken to propose amendments to the relevant legislation to implement the two-pot retirement system, a discussion document was published by National Treasury for public comment on 15 December 2021 titled 'Encouraging South African households to save more for retirement' that suggested the two-pot retirement system as a solution.

National Treasury consulted widely, briefed the relevant Parliamentary committees, and presented its responses to requests and submissions made during consultations.

Provided below is the summary of the National Treasury responses to the key issues raised by the public. These responses will be taken into account in finalising the Revenue Laws Amendment Bill, 2022, yet to be tabled to Parliament. National Treasury is continuing with the consultation with the Financial Sector Conduct Authority (FSCA) as a regulator and other stakeholders to further refine the bill on the outstanding policy design matters, which will feed into any revision of the draft bill for tabling to Parliament. National Treasury could not give an exact date for a revised bill but stated that we can view the 2023 Budget Day as the furthest date for feedback and tabling.

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The detailed 2022 tabled tax changes

2.1 Retirement-related reforms

Who may be affected?	What may change?	The impact	Effective date if enacted
Anyone who is planning their retirement.	**Clarifying the tax treatment relating to transfer of the total interest in a retirement annuity fund to another.** The Income Tax Act allows retirement fund members to transfer their retirement interest from one retirement fund to another. This provision is subject to certain conditions being met, ie in the case of retirement annuity (RA) funds, the condition is that the total interest in the transferor fund must be transferred. This condition results in retirement annuity fund members with more than one contract in a particular fund being restricted from transferring one or more contracts from one retirement annuity fund to another. Government proposes changing the legislation to allow fund members to transfer one or more contracts in a particular retirement annuity fund provided that the value of each individual contract being transferred exceeds R371 250. The following also applies: • In the case where the total member's interest in any RA is not transferred into another RA, the value of the member's remaining interest after the transfer must exceed R371 250. • The foregoing provisions do not apply in the case where the member's total interest in an RA is transferred into another RA.	✓ **Overall impact: Positive** You can transfer selected annuity contracts from a particular fund as opposed to transferring all contracts. This provides flexibility to fund members, and may boost competition and overall retirement savings returns.	1 March 2023, applying to years of assessment starting on or after this date.

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Anyone who is planning their retirement.	**Clarifying the compulsory annuitisation and protection of vested rights when transferring to a public sector fund.** For members of provident retirement funds who are younger than 55 years before 1 March 2021, all benefits accumulated prior to this date (contributions plus any growth, up to retirement date) are 'vested benefits'. For members who are older than 55 years, before 1 March 2021, all benefits accumulated prior to this plus contributions made to that same fund after 1 March 2021 (plus all growth on the accumulated benefits and contributions up to retirement date) are 'vested benefits'. Any benefits that retirement fund members do not have vested rights in are referred to as 'non-vested benefits'. It has come to government's attention that in terms of the current provisions, a person would forfeit the protection of historical vested rights if a transfer is made into a public sector fund. To address this anomaly, government proposes amending the pension and provident fund definitions to ensure that historical vested rights remain protected even if they are transferred to a public-sector fund. This is important because the vested or unvested rights determine what may be taken as a lump sum (vested rights may) and what must be annuitised (unvested rights).	✓ **Overall impact: Positive** The protection of vested rights transferred to public sector funds is a welcome proposal for members transferring to public sector funds.	1 March 2023, applying to years of assessment starting on or after this date.
Anyone who is planning their retirement.	**Clarifying the applicability of tax-neutral transfers from a pension to a provident fund.** It has come to government's attention that the current tax provisions create an anomaly whereby contributions made to a pension fund before 1 March 2021 that are subsequently transferred to a provident fund are not tax neutral. Government proposes that contributions to pension funds before 1 March 2021 also receive tax-neutral transfer treatment to provident funds.	✓ **Overall impact: Positive** This is welcomed as it affords members of pension funds the flexibility of a tax-free transfer of their retirement interest into a provident fund.	1 March 2023, applying to years of assessment starting on or after this date.

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2.2 Other income tax changes

Who may be affected?	What may change?	The impact	Effective date if enacted
Companies	**The corporate income tax rate will be lower.** As initially announced in the 2021 Budget, the corporate income tax rate will reduce by 1% to 27% for companies, effective for years of assessment ending on or after 31 March 2023 with a view to make further reductions over the medium term. This is combined with proposals aimed at protecting and broadening the tax base to limit assessed losses and further limit the deduction of interest accrued to multinational groups. For more details, please refer to the December 2021 publication.	✓ **Overall impact: Positive**	Effective in respect of any year of assessment ending on or after 31 March 2023 is 27% of taxable income of any company.
Companies making distributions in the form of return of capital.	**Companies making distributions in the form of return of capital will have to do this for all shareholders in equal proportions.** The discretion currently afforded to companies to distribute return of capital to shareholders who are natural persons while distributing dividends to shareholders who are companies will no longer be allowed. This proposal was legislated in 2021, effective to distributions made on or after 1 January 2023, however, government proposed a further amendment during 2022 because the impact of the 2021 amendment could have led to unintended consequences. **The effect of the 2022 amendment is that a distribution will be treated as a return of capital of contributed tax capital only where all the shares in that class of shares receive equal amount of distributed tax capital.** For more details, please refer to the December 2021 publication.	✗ **Overall impact: Negative** The proposed amendments are restrictive and will negatively affect genuine corporate restructuring transactions.	This proposal was legislated in 2021, effective to distributions made on or after 1 January 2023.

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Persons emigrating	**Apportioning the interest exemption and capital gains tax annual exclusion when an individual ceases to be tax resident:** • When an individual ceases to be a South African tax resident, their year of assessment is deemed to have ended on the date immediately before the day their tax residency ceased, and the next succeeding year of assessment will start on the day on which tax residency is ceased. • As a result, the individual has two years of assessment during the 12-month period, which means they may be able to double up on certain exemptions or exclusions that are allowed per year of assessment. • Government proposes that the legislation be amended to apportion the interest exemption and capital gains annual exclusion in such instances. **This anomaly is best explained by the following example:** • Mr Balisk Kotov ceased to be South African resident on 11 June 2021. He held a share portfolio with a deemed capital gain of R250 000 on 10 June 2021 and his residential property (primary residence before ceasing to be resident) was placed on the market for sale and was sold on 20 November 2021, resulting in actual capital gain of R2 050 000. • Year of assessment 1 March 2021 to 10 June 2021: Mr Balisk Kotov is entitled to the capital gains tax (CGT) annual exclusion of R40 000 from the deemed disposal of the share portfolio resulting in a deemed capital gain of R84 000 [(R250 000 – annual exclusion R40 000) x 40% inclusion rate for individuals] that will be included in his taxable income. • Year of assessment 11 June to 28 February 2022: Mr Balisk Kotov is entitled once again to the CGT annual exclusion of R40 000 with respect to the sale of his primary residence. The effect of this is that there will only be a remining capital gain of R4 000 [(R2 050 000 – annual exclusion R40 000 – primary resident exclusion R2 000 000) x 40% inclusion rate for individuals]. • However, if Mr Balisk Kotov ceases to be resident after this proposal is legislated , the CGT for the year 11 June to 28 February 2022 will be R20 000 [(R2 050 000 – R2 000 000 primary residence exclusion only) x 40% inclusion rate for individuals] ie, the R40 000 annual exclusion is no longer available as Mr Balisk Kotov has already claimed the annual exclusion in the same 12-month period.	✓ **Overall impact: Positive**	This comes into operation on 1 March 2023 and applies to tears of assessment starting on or after this date.

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2.3 Tax administration changes

Who may be affected?	What may change?	The impact	Effective date if enacted
All taxpayers (individuals, trusts and companies) having debt written off, forgiven or waived.	**The debt forgiveness rules make provision for the triggering of an additional recoupment if:** • an asset is disposed of during a year of assessment; and • the debt that was used to fund the acquisition of that asset is forgiven in a subsequent year of assessment. It is proposed that clarification be made in the legislation that this provision is also intended to apply to trigger a recoupment in a subsequent year of assessment if the disposal of the asset in a prior year of assessment resulted in a scrapping allowance or capital loss. As a result, where a capital loss arose or scrapping allowance was claimed, the total amount of the debt benefit arising in a latter year of assessment will be treated as an amount recovered or recouped, ie taxable.	✕ **Overall impact: Negative** This amendment will negatively impact trusts or any other taxpayer benefiting from debt forgiveness.	This amendment comes into operation on 1 January 2023 and applies to years of assessment starting on or after this.

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An update on the two-pot retirement system (retirement reforms)

2022 Draft Revenue Laws Amendment Bill (not yet tabled to parliament)

Overall impact

Who may be affected?	What may change?	Summary of the potential impact
South African households in distress (to help them access savings but also encourage preservation of savings).	**The introduction of a two-pot retirement system.** During the 2021 MTBPS, it was proposed that measures to boost household savings by increasing preservation before retirement and to increase flexibility through partial access to retirement funds be introduced through a two-pot retirement system that effectively splits members' overall benefits into two pots, namely: • one-third contributions plus growth, ie, a savings pot; and • two-thirds contributions plus growth, ie, a retirement pot. In terms of this system, individuals would be able to access contributions to the first pot while contributions to the second pot would be saved until for annuitization on retirement. During 2022, work continues to be undertaken to propose amendments to the relevant legislation to implement the proposals that include the two-pot retirement system. The Revenue Laws Amendment Bill, 2022, further proposes that existing retirement contributions plus growth will be valued a day before the implementation date (currently proposed to be 1 March 2024) and be designated as a vested pot. Members of the retirement funds will keep all their existing rights to the vested pot, including the ability to withdraw a lump sum on resignation or retrenchment. Please note that RA members will not be able to withdraw a lump sum from a vested pot.	The two-pot retirement system will certainly be welcomed by all retirement fund members who could experience financial strain during challenging times, for example the Covid-19 lockdown.

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How this may affect members in different situations

Who may be affected?	What may change?	Summary of the potential impact
Members who will be in financial distress on 1 March 2024.	National Treasury is currently engaged in further consultations on whether or not to allow members of retirement funds to transfer a portion of funds from the vested pot to the savings pot (to seed the savings pot) as a once-off transfer on 1 March 2024 to enable members immediate access to funds in the savings pot that they can withdraw in case of emergencies.	The seeding of the savings pot will be welcome relief for members in need as funds will be immediately available in the savings pot on 1 March 2024.
Members contributing for retirement.	National Treasury accepted the request that the two-pot retirement system would be **mandatory for all retirement funds**, and members will not be able to opt-out and must contribute one-third to the savings pot.	This will be welcomed by members who were of the view that some funds would opt out of the savings pot, thereby denying members from accessing the funds.
Members withdrawing funds from the savings pot.	The current proposal is that funds withdrawn from the savings pot will be taxed per individual marginal tax rates (ie per normal income tax tables) and not per withdrawal retirement tax tables.	Members taxed at a higher income tax rate will be worse as normal tax tables are punitive compared to withdrawal tax table.
	The retirement funds will withhold the taxes on withdrawals from the savings pot and will obtain a tax directive from the South African Revenue Services (SARS). The administrative mechanism to withhold tax will be put in place by SARS for this.	A simplified tax withholding system for fund administrators and fund members.
Members who are emigrating from South Africa.	Members who emigrate will not be subject to an uninterrupted waiting period of three years before they can withdraw from the savings pot. However, these members can only make one withdrawal of at least R2 000 every 12-month rolling period, so if a member who emigrates has already made a withdrawal, they will have to wait until the 12-months period have expired and such withdrawal will be added to taxable income and be subject to tax in the hands of the individual at the normal income tax tables.	This is positive for emigrating members.
	Withdrawal from the retirement pot will be subject to an uninterrupted three-year waiting period after cessation of South African tax residency and taxable per withdrawal tax tables.	This will negatively impact emigrating members.

Members who are emigrating from South Africa.	If you have a vested pot made up of: • a provident or pension preservation fund from which you have made a withdrawal before (ie the fund is now 'restricted'); or • a retirement annuity fund, you must be a non-resident for an uninterrupted period of three years or longer before you can access your retirement savings. In the case of a retirement annuity or a 'restricted' provident or pension preservation fund (ie one withdrawal has already taken place), you will also have to prove (at the time of retirement or withdrawal) that you have been a tax non-resident for an uninterrupted period of three years (by, for example, providing proof of being a tax resident in another jurisdiction).	The existing restrictions affecting the vested pot will continue to negatively impact those ceasing to be South African tax residents.
Members who are retrenched or have resigned from their jobs.	The following options are available: 1 **Vested pot:** A member is entitled to one withdrawal from pension fund, provident fund, pension fund preservation, provident fund preservation. 2 **Savings pot:** A member will be entitled to one withdrawal on a yearly rolling basis until this pot is depleted. 3 **Retirement pot:** A member will be entitled to a limited income-based withdrawals. These withdrawals will be subject to certain conditions (ie the vested and savings pots have been fully used, access to UIF benefits have been exhausted – the member will therefore be required to prove that they have no other alternative income source) and will be provided for a limited period and as a form of annuity (with a maximum per year).	This is positive for members as it balances the long-term retirement savings objectives and the immediate needs of members in need of funds.
Provident fund members who were 55 or older on 1 March 2021.	The intended policy options per National Treasury are as follows: 1 The member to continue contributing 100% of their contributions to the **vested pot** provided the member remains in the same fund they were a member of pre-1 March 2021. Vested pot in this case is an accumulation of all vested (pre-1 March 2021 contributions plus growth thereon) and non-vested rights (post 1 March 2021 contributions plus growth up 28 February 2024) earned prior to the two pots implementation date and contributions from 1 March 2024. 2 The member to participate in the **two-pot retirement system** with one-third of contributions from 1 March 2024 (implementation date) allocated to the savings pot and two-thirds to the retirement pot.	This is favourable for the affected members as they can choose based on circumstances.

Members who transfer	The member will be allowed to transfer the available funds from the savings pot to another savings pot or to a retirement pot free of tax. No transfer will be allowed from a retirement pot to a savings pot.	This will positively impact the long-term retirement fund preservation.
Members with divorce orders, maintenance orders, employer loans, housing loans (deductions per section 37D of the Pension Funds Act).	Government acknowledges that changes will need to be made to section 37D of the Pension Funds Act, 1956 (Act No 24 of 1956) to: 1 cater for the two-pot retirement system; and 2 ensure that section 37D deductions are catered for from the vested pot and the retirement pot when membership from the fund is terminated or when divorce order or maintenance order settlements become due and payable.	This will impact the members positively as the savings pot will not be affected.
Members and/or beneficiaries at death, retirement or disablement.	The options will be: • Allowed lump sum pay-out from the savings pot that will be taxable as a retirement lump sum subject to the retirement lump sum tables. • Allowed annuity payments from the savings pot, which will be taxed at marginal rates. • Allowed a transfer from the savings pot to the retirement pot. • Allowed a combination of the above. **NB:** The 2022 draft Revenue Laws Amendment Bill will be amended to reflect the intention that the R165 000 de-minimis to apply on a cumulative basis to amounts subject to annuitisation (ie the retirement pot and two-thirds of the vested pot).	This will impact the members and/or beneficiaries positively because of the choices based on circumstances.
Members of defined-benefit funds including Government Employee Pension Fund (GEPF).	National Treasury is undertaking a consultative process with relevant defined-benefit funds and stakeholders to consider: 1 the options available as relates to public sector funds; and 2 the protective mechanisms, for example, increasing future contributions when a member withdraws funds before retirement.	This is positive for defined benefit members as they will have access to funds in case of emergencies as well.

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Members of existing retirement annuity contracts (RAs).	The current proposal affects all retirement funds including existing retirement annuity contracts, ie, contributions to RA on or after 1 March 2024 will have to allocate one-third to the savings pot. Insurers would like the legacy RA contracts to be exempted from the two-pot retirement system due to existing terms and conditions of the RA contracts. National Treasury will be consulting the FSCA as a regulator and other stakeholders to assess the merits of the request that 'legacy' retirement annuity products be exempted from participation in the two-pot retirement system as participation would require a redesign of historically acquired insurance policies together with their respective terms and conditions.	Members of legacy RA contracts will be affected negatively since if the exemption is approved, they will not have access to funds in case of emergencies.

How this may affect retirement fund managers, trustees, regulators and investment strategy.

Who may be affected?	What may change?	Summary of the potential impact
Retirement fund managers, trustees and regulators.	Regulation 28 to the Pension Funds Act sets the broad parameters/limits per asset class for retirement funds with exception of certain living annuity contracts. It is currently unclear whether these asset class parameters/limits will apply per 'pot' or will be applicable at a fund level. This will be an issue to be clarified by the FSCA as a regulator.	The changes may affect fund performance and returns negatively.
	However, the prudent portfolio management principles will take account of risk and liquidity perspective given the expected time horizon of the investments and member behaviours in the light of withdrawal flexibility presented by the savings pot.	The changes may affect fund performance and returns negatively.

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