DASHBOARD

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NATIONAL BUDGET 2022

Minister of Finance: Enoch Godongwana

On 23 February 2022, the Minister of Finance, Enoch Godongwana presented his first Budget Review in Parliament. The Budget has been described as friendly as well as portraying light at the end of a daunting tunnel. The Budget clearly follows on from President Cyril Ramaphosa's commitment to economic recovery during his State of the Nation Address earlier this month.

> "The President reminded us that even as we face steep and daunting challenges, like we have done in the past, we will overcome.
>
> To do so, we need to strike a critical balance between saving lives and livelihoods, while supporting inclusive growth. This budget presents this balance."
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> **Minister of Finance, Enoch Godongwana, Budget 2022**

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Budget 2022 summary of changes in the retirement funding space

RETIREMENT REFORM

- No further announcements on *two-pot system, auto-enrolment* or *governance of umbrella funds*. Comments to be reviewed, followed by workshops and then draft legislation.
- Amendment to *Regulation 28 for infrastructure* to be gazetted into law by March 2022.
- Funds may invest up to 45% (previously 30%) of their capital offshore (inclusive of the 10% allowance for investments into other African countries).
- *Conduct of Financial Institutions Bill* has been revised, based on comments received, and is to be tabled in Parliament in early 2022.
- *Transformation*: FSCA to publish its transformation strategy in February 2022 for public comment, followed by consultations with stakeholders. Revised targets to submitted to the Financial Services Transformation Council for approval in 2022. The targets will be published for public comment,
- *Financial inclusion*: draft policy paper, "An Inclusive Financial Sector for All": The policy framework has been revised and will be finalised for formal adoption. Treasury to develop a financial inclusion strategy to implement the new policy framework from 2023 to 2033.
- Treasury and the FSCA will publish a draft framework for public consultation, for implementation by 2024, to *encourage private investment* in areas that are critical for growth and employment.
- Authorities are working on interventions to regulate *crypto assets*. Work on certain of the proposed legislative changes to be finalised in 2022.
- Draft tax changes were previously proposed for individuals who have *ceased to be tax resident in South Africa and who are still members of a fund in South Africa*. The work required to renegotiate multiple tax treaties is starting this year.

TECHNICAL AMENDMENTS TO THE INCOME TAX ACT FOR RETIREMENT FUNDS

- To allow retirement annuity fund members to transfer one or more contracts in a particular retirement annuity fund, subject to certain conditions.
- So that transfers into public-sector funds of vested rights related to compulsory annuitisation will remain protected.
- To correct the anomaly whereby a member of a provident fund, who is younger than 55, retires from the provident fund for reasons other than ill health, any lump sum received is taxed as a withdrawal benefit rather than a retirement benefit.
- To ensure that contributions to a pension fund made before 1 March 2021 are also tax-neutral on transfer.

CORPORATE INCOME TAX

Corporate income tax rate will be reduced to 27% (from 28%) this year for companies with tax years ending on or after 31 March 2023.

PERSONAL TAX

- An inflation adjustment of 4.5%. to the personal income tax brackets and rebates.
- The Rand amount where income tax now starts increases to R91 259 per annum (for a person under the age of 65).
- Medical tax credits: increase from R332 to R347 per month for the first two members and from R224 to R234 for additional members.
- The annual tax-free threshold for a person under the age of 65 will increase to R91 250 (from R87 300).

SOCIAL GRANTS

- 12-month extension of the R350 per month special COVID-19 social relief of distress grant.
- A new extended child support grant for double orphans.
- Old age and disability grants will increase to R1 985 from R1 890 (5% increase).
- Grants for persons over the age of 75 and war veterans will rise to R2 005 from the current R1 910 (5% increase).
- Care dependency grant will rise from R1 890 to R1 985 (5% increase).
- Foster care grant will increase from R1 050 to R1 070 (1.9% increase).
- Child support grant will increase from R460 to R480.

INCOME TAX: INDIVIDUALS AND TRUSTS

Tax rates from 1 March 2022 to 28 February 2023:

Individuals and special trusts

Taxable Income (R)	Rate of Tax (R)
1 - 226 000	18% of taxable income
226 001 - 353 100	40 680 + 26% of taxable income above 226 000
353 101 - 488 700	73 726 + 31% of taxable income above 353100
488 701 - 641 400	115 762 + 36% of taxable income above 488 700
641 401 - 817 600	170 734 + 39% of taxable income above 641 400
817 601 - 1 731 600	239 452 + 41% of taxable income above 817 600
1 731 601 and above	614 192 + 45% of taxable income above 1 731 600

Trusts other than special trusts: rate of 45%

Rebates	
Primary	R16 425
Secondary (persons 65 and older)	R9 000
Tertiary (persons 75 and older)	R2 997

Age	Tax Threshold
Below age 65	R91 250
Age 65 to below 75	R141 250
Age 75 and over	R157 900

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Retirement reform

National Treasury's ("Treasury's") two Discussion Papers

On 14 December 2021, Treasury issued two Discussion Papers, for consultation:

- Paper one: Encouraging South Africans to save more for retirement - which deals mainly with the two-pot system and auto-enrolment; and
- Paper two: Governance of umbrella funds.

Please see Dashboard 1 of 2022 for details about these Discussion Papers.

The two-pot system

This system is aimed at allowing limited withdrawals from funds whilst members are still in employment but at the same time ensuring more retirement savings are preserved until retirement.

Auto-enrolment

Government is concerned about the high number of workers who are not covered by (members of) a retirement fund because they are, for example, working in the *informal economy* or they are sole proprietors or independent contractors. In addition, 30% of workers in the *formal sector* are not in retirement funds. Treasury is of the view that this is largely due to retirement funds being voluntary to join.

To extend formal sector enrolment in retirement funds, Treasury proposed (in Discussion Paper one) that all employers should be compelled to provide retirement employee benefits through legislation that compels all employers to deduct contributions to an occupational fund or another approved fund, for all their employees.

The aim is also to extend automatic and mandatory enrolment in a retirement fund to all workers, including the self-employed.

Umbrella fund governance

The second Discussion Paper addresses issues that relate to umbrella funds, but the proposals go much further than umbrella funds and touch on stand-alone funds, sponsors, employers and members. National Treasury states in Discussion Paper two that while some umbrella funds (multi-employer funds) appear to be well run, it is concerned about the governance of others and the effect that poor governance has on member outcomes.

In Discussion Paper two, Treasury states that particular attention will be paid to so-called commercial umbrella funds during this process. Treasury states that commercial retirement funds are those that have been established by financial services providers to drive new business to themselves and related parties and are operated as if they are parts of the businesses of those for-profit organisations.

In this Budget review, it states that Discussion Paper two proposes that "members of a commercial umbrella fund should elect at least 50 per cent of the members of the board of trustees. At present, this is not a requirement for commercial umbrella funds, unlike in other occupational funds".

This is a bit perplexing as we did not see this specific proposal in the Discussion Paper. Rather Treasury was considering legislating committees akin to the current umbrella fund management committees (similar to the UK concept of Independent Governance Committees) which would work alongside fund boards and have specific powers and obligations. However, it is early days in relation to the consultations and proposals and we will ensure that we participate in the process ahead.

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No further announcements on the proposals in the two Discussion Paper

No additional information was forthcoming in the Budget Review about any of the reforms mentioned in the Discussion Papers. This is to be expected as Treasury is still in the consultation phase of the reform process. Treasury stated that “Public comments on the tax treatment of contributions to the two pots are being reviewed in preparation for public workshops, to be followed by legislative amendments”.

Regulation 28 to the Pension Funds Act and infrastructure

Regulation 28 to the Pension Funds Act aims to lessen concentration risk to retirement savings by limiting the extent to which retirement funds may invest in a particular asset or in particular asset classes. The amendment of Regulation 28 is mainly intended to encourage increased investment by retirement funds in infrastructure and better measurement of this. Investment in infrastructure will remain at the discretion of the board of a fund and is not proposed to be mandatory.

The Budget Review provides that the amendments have been through two rounds of public consultation and will be gazetted into law by March 2022.

Offshore allowance for retirement funds

We are pleased to see that the Budget Review document announced that local “insurance, retirement and savings funds” may invest up to 45% (previously 30%) of their capital offshore. This is inclusive of the 10% allowance for investments into other African countries.

Update on the Conduct of Financial Institutions Bill (“COFI”)

The first draft of COFI was published for public consultation in December 2018. The second draft was published on 29 September 2020 for public consultation.

In the Budget Review, it is stated that Treasury has revised COFI based on feedback from stakeholders and that the Bill is expected to be tabled in Parliament in early 2022.

As a reminder:

- COFI is a key pillar in government's Twin Peaks financial sector regulatory reform process that aims to entrench better financial customer outcomes in the South African financial sector. It is a financial institution-facing law that mostly sets conduct principles for financial institutions to meet (principle–based legislation).
- The overall approach is the application of overarching principle-type requirements to categories of activities and financial institutions. However, it is acknowledged that more detailed requirements, delivered by way of conduct standards, are necessary to support the overarching principles in certain circumstances.
- COFI will significantly streamline the legal landscape (i.e. the laws that financial institutions are currently subject to) for conduct regulation of financial institutions and others.
- One of the aims of COFI is to give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles. COFI ensures that the TCF principles are legally binding and enforced on all financial institutions.

Update on transformation and financial inclusion

Timing

The Financial Sector Conduct Authority (“**FSCA**”) will publish its transformation strategy in February 2022. This will outline:

- the FSCA's approach to promoting financial sector transformation within the existing policy framework, including the Financial Sector Regulation Act and the future COFI; and
- how the FSCA intends to effect key proposals in COFI.

Process

The strategy will be published for public comment and then consultations will be held with stakeholders.

Targets

The sub-committees of the Financial Sector Transformation Council are reviewing the transformation targets in the Financial Sector Code. This review of the targets is expected to conclude, and the revised targets submitted to the Financial Services Transformation Council for approval, in 2022.

The Department of Trade, Industry and Competition will publish the revised targets for public comment.

Update on the financial inclusion strategy

In 2020, Treasury published a draft policy paper, *An Inclusive Financial Sector for All*, for public comment. It aims to establish a policy framework for financial inclusion. Treasury is of the view that financial systems have substantially developed in South Africa in the past 20 years, however, financial systems have not sufficiently closed the gap that exists in access to financial services by individuals and small, medium and micro enterprises (SMMES). In addition, international and domestic factors such as the pandemic, low economic growth, continuing high unemployment levels, increasing consumer prices, and greater household dependency on credit impact negatively on household and business financial health.

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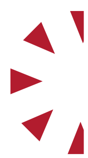
- The Paper explores what needs to be done to:

a) deepen the financial inclusion of individuals,
b) extend access to financial services for SMMES; and
c) to leverage a more diversified provider and distribution base for financial services in South Africa.

The previous Budget 2021 reported that National Treasury would facilitate workshops with stakeholders to discuss these comments before finalising the Paper. It would also work with industry and civil society working groups and forums to develop a financial inclusion strategy, including a monitoring mechanism, to assess the state of financial inclusion and the impact of this policy.



In Budget 2022, Treasury reports facilitating workshops with stakeholders during 2021 to discuss the comments received on the draft policy paper. The policy framework, aimed at promoting financial inclusion in South Africa, has been revised and will be finalised for formal adoption.

National Treasury states, in this Budget, that it will work with industry and civil society working groups and forums to develop a financial inclusion strategy to implement the new policy framework from 2023 to 2033, by setting targets as well as monitoring and evaluation mechanisms.

Long-term alternative investment framework

Treasury states that in 2022, it and the FSCA will:

"introduce a framework to encourage private investment in areas that are critical for growth and employment. These include infrastructure, small and medium enterprises, and sustainable finance – a concept that broadly refers to environmental, social and governance considerations in investment. The framework may be established through the regulatory framework defined by the Collective Investment Schemes Control Act (2002) or within the successor to that Act – the Conduct of Financial Institutions Bill – which is in development".

Treasury and the FSCA will publish a draft framework for public consultation, for implementation by 2024.

Crypto assets

In June 2021, the Intergovernmental Fintech Working Group ("**IFWG**") published a position paper on crypto assets, setting out an approach to regulating crypto assets. Based on this paper, authorities are working on, among other things, the following interventions:

- Including crypto asset service providers as accountable institutions within the Financial Intelligence Centre Act (2001) ("**FICA**") to address money laundering and terror risk financing through crypto assets. In addition, to align to the standards set by the Financial Action Task Force. The proposed amendments to FICA are expected to be finalised during 2022.
- Protecting consumers by considering the declaration of crypto assets as a financial product under the Financial Advisory and Intermediary Services Act (2002) ("**FAIS**"). Any person providing advice or intermediary services related to crypto assets would then have to be recognised as a financial services provider under FAIS. This work is expected to be finalised during 2022.
- Enhancing monitoring and reporting of crypto asset transactions to comply with the Exchange Control Regulations.

Non-tax residents in South African funds

Background

Draft tax changes were previously proposed for individuals who have ceased to be tax resident in South Africa and who are still members of a fund in South Africa. Treasury is concerned that if a member of a fund ceases to be a tax resident and later retires from the fund or dies, the Income Tax Act deems such amounts to be from a South African source, thus remaining within South African tax jurisdiction, despite the member no longer being a South African tax resident. However, the member is already a tax resident of another country, and the benefit may be subject to tax in that country and not South Africa as a result of a tax treaty.

In terms of the previous proposals, persons would be deemed to have withdrawn from their retirement funds in full on the day before they cease to be SA tax residents which would result in a deemed retirement withdrawal tax. If the member then left their monies in the fund until retirement or death then the tax, plus interest, on the deemed withdrawal would be deferred until the monies are paid out of the fund or the member retires. When payments are actually made to the member by the fund, the payments would then be taxed.

Not going ahead for now, but the work to start to allow for implementation

As we heard in the Medium-Term Budget Policy Statement in 2021 ("**MTBPS**"), this proposal fell through and was not contained in changes to the tax legislation. Treasury received a lot of comment on the proposal which highlighted that the provision bypasses tax treaties and could potentially result in double taxation for members of retirement funds. Treasury stated at the time of the MTBPS that it had not given up on the proposal and would look for a way to implement it.

In this Budget Review, it is stated that multiple tax treaties need to be revised to ensure South Africa retains taxing rights on the above-mentioned payments from local retirement funds. Government has not given up on this initiative and intends to start these negotiations this year.

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Technical amendments to the Income Tax Act for retirement funds

Transfers from one retirement annuity fund to another retirement annuity fund

The Income Tax Act conditionally allows members of retirement funds to transfer their retirement interest from one retirement fund to another. In the case of retirement annuity funds, the transfer is permitted only if the total interest in the retirement annuity fund is transferred. Treasury states that the conditions result in retirement annuity fund members with more than one contract in a particular retirement annuity fund being restricted from transferring one or more contracts from one retirement annuity fund to another.

Treasury proposes to address this anomaly through legislation to allow retirement annuity fund members to transfer one or more contracts in a particular retirement annuity fund, subject to certain conditions to ensure that the current minimum thresholds are not contravened. This is a welcome development, but we will have to see what this draft legislation provides before commenting further.

Compulsory annuitisation and transfers to public-sector funds

Treasury describes the compulsory annuitisation reforms that came into effect on 1 March 2021. It goes on to state that these changes were made subject to the protection of vested rights. In this context, Treasury describes vested rights as historical rights that arose before 1 March 2021 and new rights being those arising after 1 March 2021. Treasury states (in a simplification of compulsory annuitisation) that:

"The protection of vested rights therefore applies as follows:

- Any member of a provident or provident preservation fund as at 1 March 2021 will not be required to annuitise any historic vested rights.
- New vested rights in relation to members who are 55 years or older as at 1 March 2021 will remain protected provided the member remains in that same fund.
- Historical vested rights may be transferred into another retirement fund without forfeiting their vested rights protection (irrespective of the number of transfers effected)."

It is likely this last bullet point that Treasury is concerned with in relation to transfers to public-sector funds.
Treasury then expresses concern that the compulsory annuitisation legislation means that historical vested rights are not protected if members transfer to a public-sector fund. Legislation will be amended such that where there are transfers to public-sector funds, vested rights will remain protected.

Further technical amendments are proposed for 1 March 2022 to clear up the application of compulsory annuitisation to public sector funds.

Retirement of a provident fund member, who is younger than 55, on grounds other than ill health

A certain section of the Income Tax Act still treats pension and provident funds differently. That is, if a member of a provident fund who is younger than 55 retires from the provident fund for reasons other than ill health, any lump sum received is taxed as a withdrawal benefit rather than a retirement benefit. This same provision does not apply to members of pension or retirement annuity funds. This anomaly will be corrected to remove this provision for provident funds.

Pension to provident fund transfers of contributions made before 1 March 2021

There is an anomaly in the tax legislation which means that transfers from a pension fund to a provident fund in relation to contributions made to the fund before 1 March 2021 are not tax neutral. Government proposes that legislation clarifies that contributions to a pension fund made before 1 March 2021 are also tax-neutral on transfer.

No other changes mentioned in relation to the compulsory annuitisation legislation

- It is unfortunate that Treasury has not seen it necessary to include other changes that the retirement fund industry has been asking for in relation to clarifications required of the compulsory annuitisation legislation.
- Members who are 55 years and older: as we know, if these members start participating in a fund after 1 March 2021 (that they were not members of on 1 March 2021) their ongoing contributions to that new fund will not be vested. There has been no indication that this will change. Unfortunately, this has led to portability problems as many of these affected members do not want to transfer off the fund that they were members of on 1 March 2021 because they do not want to forfeit ongoing vested rights.

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Personal tax

- On the positive side, there is some personal tax relief for taxpayers as it was announced that there will be an inflation adjustment of 4.5% to the personal income tax brackets and rebates. The Rand amount where income tax now starts becoming payable increases to R91 259 per annum (for a person under the age of 65).
- Medical tax credits: the inflation adjustment to medical tax credits will increase credits from R332 to R347 per month for the first two members and from R224 to R234 for additional members.
- The annual tax-free threshold for a person under the age of 65 will increase to R91 250 (from R87 300).
- Please see the summary for the tax rates table.

Tax free savings accounts

There is no increase in the contribution limits for tax-free savings accounts.

Corporate tax

As expected, the corporate income tax rate will be reduced to 27% (from 28%) this year for companies with tax years ending on or after 31 March 2023. This gain will be counterbalanced to some extent by the offsetting of the balance of assessed losses being limited to 80% of taxable income.

Social grants

- The 2022 Budget provides for a 12-month extension of the R350 per month special COVID-19 social relief of distress grant.
- A new extended child support grant for double orphans will be initiated.
- Old age and disability grants will increase to R1 985 from R1 890 (5% increase).Grants for persons over the age of 75 and war veterans will rise to R2 005 from the current R1 910 (5% increase).
- Care dependency grant will rise from R1 890 to R1 985 (5% increase).
- Foster care grant will increase from R1 050 to R1 070 (1.9% increase).
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