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## Legal & industry update – October 2025

In this publication we look at:

- Taxation Laws Amendment Bill 2025 (TLAB)
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- Constitutional Court ruling on parental leave: Van Wyk & Others v Minister of Employment and Labour

### Taxation Laws Amendment Bill 2025 (TLAB)

Comments on the 2025 draft Taxation Laws Amendment Bill (TLAB) and draft Tax Administration Laws Amendment Bill (TALAB) were due in September 2025.

Key changes affecting retirement funds include:

#### *Tax applied on death benefits*

National Treasury has noted that currently payouts from the savings component to beneficiaries upon a retirement fund member's death are often taxed as ordinary income due to being classified as savings withdrawal benefits.

The TLAB clarifies that lump sum death benefits from all three components (vested, retirement and savings) should qualify as retirement fund lump sum benefits and be taxed at the more favourable lump sum rates.

This change will be backdated to 1 September 2024.

#### *Savings withdrawal on membership termination*

Members who terminate their membership will be able to withdraw their savings component balance even if it is below R2 000 or if they have already taken a savings withdrawal benefit in the same tax year.

### *One-time withdrawal for preservation fund members ceasing to be tax residents*

The Income Tax Act definitions for “pension preservation fund” and “provident preservation fund” will be updated. Members who have not taken their once off withdrawal from the vested component no longer need to be non-resident for three years before withdrawing. In other words, the three-year non-residency rule applies only if the member has already taken their once off withdrawal.

This change is effective 1 March 2026.

### *Divorce awards under religious tenets*

Changes to the Pension Funds Act, specifically section 37D, were introduced along with the two-pot system changes on 1 September 2024. These changes allow former spouses to claim part of a member's pension according to the rules of their religion. For example, this applies when Muslim marriages end. But, the Income Tax Act has not been updated to include these religious rules, which has caused confusion about taxes.

The TLAB suggests adding similar wording to the Income Tax Act to clarify how to tax the amounts given to former spouses under religious tenets.



### *Exemption for child maintenance payments*

In 2008, the rules on taxing maintenance payments from retirement funds were changed so that these payments are treated as regular income for PAYE tax when members receive them.

However, when making this change, the exemption providing that maintenance payments not made by retirement funds should not be taxed was accidentally removed. In other words, maintenance payments not from retirement funds should not be taxed when the person receiving them gets the money.

The TLAB proposes changing the law to make sure that ordinary child maintenance payments paid from money that has already been taxed are not taxed when received. This change will not affect how maintenance payments made by retirement funds are taxed.

### *Cross-border retirement income*

If a South African resident receives a lump sum, pension or annuity from outside South Africa because of work they did outside the country, they currently don't have to pay tax on that money in South Africa.

The draft TLAB proposes removing this exemption, meaning that unless a double taxation agreement applies, this income would then be taxable in South Africa, aligning with the residence based tax system and ensuring the government doesn't lose tax revenue.

On 23 September, National Treasury conducted public consultations regarding the proposed reforms to retirement funds. The majority of the industry responded positively to the proposed changes. However, the proposal to remove the tax exemption on foreign retirement income received by South African residents generated significant debate. Stakeholders expressed concerns about the potential economic impact.

South Africa is a preferred retirement destination for many expatriates who return with foreign pensions and contribute to the local economy through their spending and value-added tax (VAT) payments. Doing away with this exemption could make South Africa less attractive as a retirement option, potentially prompting some expatriates to relocate elsewhere. Such a development would decrease local consumer spending and undermine the economic benefits intended by the proposal.

In summary, the TLAB 2025:

- Says lump sum death benefits from all retirement fund parts should be taxed like retirement lump sums, not ordinary income.
- Allows members to withdraw small savings on membership termination regardless of limits.
- Allows more relaxed withdrawal rules for preservation fund members stopping South African tax residency.
- Clarifies tax treatment of pension amounts assigned to former spouses under religious rules.
- Ensures child maintenance payments made from taxed income are not taxed again when received.
- Removes tax exemptions on foreign retirement income to better align with South Africa's tax treaties.

### **Draft Revenue Laws Amendment Bill 2025 (RLAB)**

The 2025 RLAB introduces specific amendments to the Income Tax Act (ITA) and the Revenue Laws Amendment Act (RLAA) of 2024 to facilitate the implementation and refinement of the two-pot retirement system. From a retirement fund point of view, the main points to be aware of are:

- 1. Seeding date clarification for older members of provident funds**  
The Bill clarifies how to calculate the seeding amount for members of provident and provident preservation funds aged 55 or older on 1 March 2021. They can choose the seeding date as either 31 August 2024 or the end of the month when they make an election, depending on the fund's rules. This gives certainty to members and clarity to members and administrators.
- 2. Alignment of maintenance deductions**  
Proposed amendments refine the definition of “member's interest” to make sure that section 37D maintenance claims are applied proportionally across all three components (savings, retirement and vested). This makes sure maintenance deductions are done clearly and fairly along with other deductions.
- 3. Definition of Retirement Annuity Fund**  
The Bill revises the definition of “retirement annuity fund” to explicitly refer to the total member's interest, aligning terminology with the goals of retirement reform and promoting consistent application across retirement fund types.

Following a thorough review, the Select Committee on Finance has approved the Bill, signalling that the 2025 RLAB is expected to be promulgated in the near future.

### **Constitutional Court ruling on parental leave: Van Wyk & Others v Minister of Employment and Labour**

On 3 October 2025, the Constitutional Court delivered a unanimous judgment in *Van Wyk & Others v Minister of Employment and Labour*, declaring sections of the Basic Conditions of Employment Act 75 of 1997 (BCEA) and the Unemployment Insurance Act 63 of 2001 (UIA) that regulate maternity, parental, adoption and commissioning parental leave unconstitutional. The Court found these provisions discriminatory on multiple grounds including sex, gender and family formation method. The Court has given Parliament 36 months to amend the BCEA and UIA to remove this unconstitutionality. Meanwhile, it established an interim parental leave regime set to apply until legislation is amended. No interim UIF benefits were ordered; these remain for Parliament's determination with possible future Court guidance.



#### *Key principles of interim parental leave*

- The concept of “maternity leave” limited to birth mothers has been repealed.
- Both parents are entitled to a combined total of four months and ten days’ parental leave.
- Parents have full discretion on how to split the leave, whether concurrently, consecutively or a combination.
- If parents disagree on the split, leave must be divided as equally as possible.
- Birth mothers retain preference for leave related to birth preparation and recovery, as stated in the judgment.
- Single parents or where only one parent is employed are entitled to the full leave entitlement.
- The leave entitlement extends equally to parents via surrogacy or adoption, with the Court ruling the previous age cap of 2 years old on adoption leave as arbitrary and unconstitutional, to be reconsidered by Parliament.

This ruling represents a significant advance toward gender neutrality, self-determination, and equality in South African parental leave law, profoundly impacting both the workplace and family life.

#### *Tips for employers*

Given this ruling, employers need to review their employment contracts, policies and handbooks to make sure they comply with this new parental leave framework.

Key considerations for this review include:

- Replace all terminology referring to maternity, adoption, and commissioning parental leave with the unified term “parental leave.”
- Implement clear procedures for employees to disclose the leave intentions of their partners or co-parents, which may include a letter from the partner or coparent’s employer or a sworn affidavit.
- Ensure provisions allow birth mothers to take parental leave both before and after childbirth.
- Provide for parental leave entitlement in cases of stillbirth or third-trimester miscarriage.
- Establish practical protocols requiring employees becoming parents through surrogacy or adoption to provide documentation of parental rights and responsibilities in accordance with the Children’s Act 38 of 2005

Making sure your policies align with these new requirements is important, not only for legal compliance, but also to support employees through this landmark shift toward equal parental leave.

**This publication does not provide advice or legal opinion. If you have any questions/comments on the above, please contact your consultant.**

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