Personal Perspectives

South Africa Edition
April 2023

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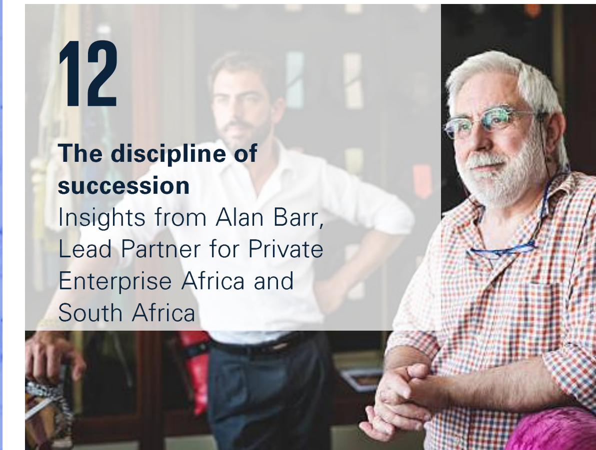

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Preface

Welcome to the 2023 Edition of the Private Enterprise Publication, Personal Perspectives (South African edition).

The past 18-24 months have evidenced business embracing hybrid working, remote working and fully embracing the "new normal" (whatever that may be for your family and/or business). During this period, globally we have seen a trend in relation to employers embracing the "Work from Anywhere"[1] concept which strengthens the "employee value proposition", but which also comes with its own regulatory and compliance considerations. However, more recently, in the domestic South African market, we have seen business requiring employees to return to the office for up to 3-4 days a week.

In this edition:

We talk about "Succession" and weigh-in on the importance of foresight and planning as well as a separate piece on the consideration of cross-border family governance. There's an article covering macroeconomics – how well the economy is doing given the resources at its disposal and how is this changing over time.

From a South African perspective, there has been a suggestion to meet the short-term cash needs of individuals whilst still saving for and preserving funds for retirement. National Treasury has suggested the introduction of a "two-pot" system for retirement where individuals may have short term access to retirement savings whilst having availability to a (limited) cash value.

On 22 February 2023, the South African Finance Minister delivered the annual Budget Speech for the 2023/2024 South African tax year. There were no major surprises. Overall, tax rates remained steady with increases in the tax rebates, tax threshold and the introduction of the solar panel incentive rebate systems for business and individuals. There are some proposals relating to Trusts as it relates to Section 7C of the Income Tax Act[2] (**ITA**) – deemed donations in respect of low/interest-free loans with the Trust. Clarity will also be provided regarding foreign loans and the timing of the translation of the foreign loan into ZAR funds. There will also be alignment relating to capital amounts and revenue (income) amounts being distributed.[3]

Two days later, on 24 February 2023, South Africa was grey-listed by the Financial Action Task Force, stricter compliance measures have been put into place for South African Trusts to ensure compliance.[4]

- As of 1 April 2023, Trustees will be required to lodge and keep up-to-date records, with the Master of the High Court, of the beneficial ownership of their Trusts. The information in relation to the beneficial owners will include who the founders, trustees, beneficiaries and any individuals who exercise effective control of the Trust are. It also includes the direct/indirect beneficiaries if the Trust is a bewind trust.
- It is important to note that failure to comply with this amendment could result in a penalty for the Trustees of R10 million or 5 years imprisonment, and additional actions by the Master of the High Court.

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It is evident that there is a continued focus on trusts, but this is not to say that they are not effective wealth governance vehicles, one just needs to ensure that the Trustees continuously monitor the reporting requirements, as part of their fiduciary duty to manage the Trust's assets, for the beneficiaries. This aligns with a global trend where Governments and their Revenue Authorities are looking to replenish the relief provided during the pandemic – please see the recently published KPMG Private Enterprise Global Family Business Tax Monitor .[5]

In 2021, KPMG issued its white paper on Philanthropy – 2021 KPMG Global UHNWI[6] Philanthropy White Paper – which looked at impactful giving on a global basis. In addition, in 2022, KPMG Africa hosted a three-part webinar on impactful giving in Africa. The link to the three-part webinar series is here: Disruptive Philanthropists in Africa - KPMG South Africa (home.kpmg).

If you have any comments, feedback or suggestions of what you would like us to cover in future issues, please do get in touch.

Melissa Duffy

Lead Partner: Family Office & Private Client
KPMG in South Africa

[1] Footnote: Work anywhere in the world
[2] Footnote: No.58 of 1962
[3] Footnote: Section 25B of the ITA and para 80 of the Eighth Schedule of the ITA
[4] Footnote: We understand that discussions are still being held to refine these requirements
[5] Footnote: https://kpmg.com/xx/en/home/insights/2023/02/global-family-business-tax-monitor.html
[6] Footnote: Ultra-high-net-worth individual

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Cross border family governance

A family business has a unique element that no other business has – the aspect of the family. This difference plays a significant role in decision making and offers both opportunities and challenges to the family and the business. It is the need for growth and sustainability of the family business which creates a fine balance between the needs of the business and the expectations of your family members.

One of the key considerations when a family is looking to manage the balance between the needs of the family and the business, is whether there is effective family governance in place.

What is family governance?

I am certain that the question running through many readers' minds is "what is family governance?"

KPMG Private Enterprise defines family governance as "*the structure, processes and tools which the family puts in place together as a family to engage in regular, meaningful conversations and exchanges, and to make decisions together for the short and long term.*"

This is only the starting point when it comes to understanding:

Why is the family in business together, i.e., what is their "shared purpose" and how does the family define "success"?

What are the roles and responsibilities of each family member? Not only as owners and/or management of the family business, but also those responsibilities that are outside the business, that are integral to the family's aspirations.

How are the various governance structures implemented effectively?

The above questions are vital to effective family governance, to ensure that the family is:

Maintaining family harmony, with the caveat that it is unlikely to have true harmony, but a point of best compromise is achievable.

Planning for the long-term, with an initial focus on returns, control, management and ownership.

Establishing how to deal with the uncertainty surrounding change/transition/succession in a constructive way.

Family governance – the structure, processes and tools which the family puts in place together as a family to engage in regular, meaningful conversations and exchanges, and to make decisions together for the short and long term.

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What is important to note is that, as a starting point, every successful family business will in fact already have a form of natural governance that has ensured they have achieved the successes to a point in time.

The two questions which generally follow are *"what if we just continue with our natural governance?"* and *"when do we need to formalise our family governance?"*.

There is no one solution for every family and their business, as by their very nature every family and their business will be different. However, when it comes to experiential learnings by many trusted advisors to family businesses, although there is no crystal ball to answer such questions, there are cautions that the family business should be aware of and that should be considered when answering the two questions:

- As to why can't we just continue with the natural governance, although there is always a chance it will continue to support the success of the family and their business, there are more cases of this not holding true. There are a variety of reasons, but one of the main reasons for this is the fact that generally families will grow faster than the family business. As the family grows and more family members become dependent on the family business, there is more emotions that need to be managed when key decisions impacting the family and the business need to be made.
- As to the second question, the simple answer is never too soon. What is important to ensure is that an effective process is undertaken to formalise the family governance, and there is agreement by most, if not all, of the family.

The important aspect to reiterate is that formalising the family governance is a process, it is not a once-off event, and there is a need for regular review, as the family continues to grow and adapt.

What are the success factors?

Given the unique attributes of family businesses and the fact that one needs to account for individual family members' views, there is no one perfect governance structure. There are, however, certain attributes that a family governance structure should account for, to ensure a good starting point for the future success of the family business. Some of the pertinent attributes are:

To establish the family's "shared purpose" – the greatest strength in any family business is a clear shared purpose that clarifies why the family, as current and future owners, want the business to continue and ultimately how they will measure success. What is becoming clear to both business families, and the communities they operate in and support, is that the definition of success is not just financial returns. Success for a business family also encompasses the emotional value that they derive from the connections they have with their business which drives innovation and the impact that the business has on many different stakeholders, including the environment and society that the business supports.[1]

To define the owners' (of the family business) strategy – the starting point in this regard is to ensure there is clarity as to who the "owners" are, which depending on the legacy ownership structure, could range from the individual family members (across generations and branches of the family) and/or trustees of the family trusts. What is important is that the owners' intentions are also clarified as to whether they are the custodians of the family business for the future generations, or value-out owners. The strategy should also ensure there is clarity as to how decisions are made, with reference to the "shared purpose", supported by the vision and values of the family, and not subject to any other extraneous influences or considerations.

To plan for succession – the elements of a robust succession plan generally include:

- Ensuring that there is a clear understanding that succession is a process, and not a once-off event.

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- Succession also needs to be planned for across the various governance structures, these being – the family, the owners and the business.
- Managing the expectations of the current and upcoming generations as to why the plan is necessary, the "what needs to be done to ensure an effective plan" and the "how to implement the plan".
- Ensuring the right person for the job is identified (the best candidate may even be an external non-family individual), they should be appropriately skilled for the role and invest time to develop themselves for the role.
- The process should include grooming the successor (family or non-family), which may include education regarding the family vision and values, the business needs, to protect the legacy/brand, to retain legacy knowledge and in turn to maintain financial confidence.

To engage with the upcoming generation – given the realisation of two of the three certainties in life over the past two and a half years of uncertainty, even the most successful leader understands they will not live forever, and as such engaging the upcoming generation is vital to ensure the future success of the family business.
In the recent KPMG Private Enterprise and STEP Project Global Consortium report "The regenerative power of family businesses: Transgenerational entrepreneurship", a deep dive into the secrets behind the long-term, sustained performance of family businesses indicates that the majority of business families are actively developing the capabilities of the upcoming-generation leaders. The current generation leaders are acknowledging that the upcoming generation are new-age entrepreneurs and they're helping to create an exciting new vision for the future of the business.[2]

There has also been a realisation that the upcoming generation is more attuned to the digital age so they can bring a lot of value to the business. However, what has also been front of mind is that the current generation have invaluable experience in surviving hardships and past crises. Accordingly, it is encouraged that the two generations actively engage and learn from each other.

Documenting the above into a family constitution.
The family constitution is a living document which is an agreement between the family members as to how they communicate, make decisions and implement. It is not a legal agreement, and thus why the legal documentation supporting the various governance structures (for example the Shareholders' Agreement, the Trust Deed, the Wills, the Memorandum of Incorporation etc.) need to be aligned with the guidance of the family constitution.

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What is cross border family governance?

From a governance perspective, there are no specific jurisdictional regulations to consider when it comes to family governance, but there are pertinent risks associated with in-country regulations that need to be considered and accounted for to support the family governance.

The first consideration is how to manage governance across jurisdictions, specifically the structures one needs to create/adapt in the second/other jurisdiction. One pertinent consideration is whether the other jurisdiction may need to be the family's new primary/holding jurisdiction where the governance structures are managed from. This will be dependent on how the leadership is structured, and who is responsible for decision making across the family, the ownership and business governance structures.

From a regulatory and compliance perspective across various jurisdictions, there are technical risks the family should be aware of and put in place the necessary safeguards. When the family "internationalises", they should consider undertaking a strategic analysis of the jurisdictions they may wish to internationalise into, with a focus on understanding some of the pertinent country risks, which may include the following:

- Whether they, being the family and/or the business, are able to adapt to the nuances of a new and foreign environment and the people and business cultures, as this should never be underestimated.
- Understanding whether the international jurisdiction is an operational or investment jurisdiction, and whether they need to engage with local versus foreign skillsets, starting by identifying whether there may be alignment with the current skillsets they have and where there may be gaps.
- Tax should always be front of mind as moving family members or family assets (including shares in the family business) will likely trigger a liquidity event, often due to some form of exit tax from the original home jurisdiction.
  - Linked to the above, and sometimes not considered, is whether family members in leadership roles create a risk by moving the place of effective management of the family business, and thus an exit tax charge associated with the family business may be triggered.
  - The focus on base erosion profit shifting between tax jurisdictions does not exclude family businesses, as the preamble to the global regulations in this regard includes that families should not be excluded.
  - Although not a recent trend, but an ongoing trend of the potential introduction of a wealth tax, in jurisdictions where there is currently no explicit wealth tax. During times of financial uncertainty for the South African government, the dual demands of increased tax revenue and economic inequality drive the discussion as to whether a wealth tax is a possible solution to both problems.

- Another key aspect generally not considered is whether there is some form of investment protection. This is not only the double tax considerations, but whether there is an investment treaty, which provides the investor some protection against investment disputes arising in the foreign jurisdiction.
- The family also needs to be aware of the impact on the individual family members, which also brings in the emotional impact, of having to move friendship groups, schools, but also the hard realities such as understanding whether there may be a need for conscription into the armed forces (Singapore as an example).

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Concluding comments

Any successful family business should not disregard the natural governance that has supported the family, the owners and the business to achieve success.
The cautionary note is that as the family grows, there is more complexity to be aware of and to manage. Formalising the family governance should assist the family to be aware of the potential pitfalls associated with the increased complexity and how to manage them, or to potentially ensure they are not realised.

It must be reiterated that there is no one family governance structure that will work for all family businesses, and there are learnings considering the success factors of other successful family businesses that have undertaken the family governance process.

The final point to reiterate is that family governance is a process, it is not a once off event, and there is a need for constant review, as the family continues to grow and adapt.

Please reach out should you wish to discuss your family governance process.

[1] Footnote: The regenerative power of family businesses: Transgenerational entrepreneurship identified that socioemotional-wealth is a critical component of transgenerational entrepreneurship – "the family's control and influence, their emotional attachment and identification with the family business" - Mejía, L. R., Haynes, K. T., Núñez-Nickel, M., Jacobson, K. J., & Moyano-Fuentes, J. (2007). Socioemotional wealth and business risks in family controlled firms: Evidence from Spanish olive oil mills. Administrative Science Quarterly, 52(1), 106-137.

[2] Footnote: Tom McGinness, The next generation of work, KPMG Private Enterprise Blog Series

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Insights from our economist Frank Blackmore

Introduction to macroeconomics

Macroeconomics is the branch of economics that deals with the level of total economic activity and tries to understand the workings of the entire economic system. It attempts to diagnose the economy, as a whole, dividing it into various meaningful aggregates and studying the relationships between them.

A main objective of macroeconomics is to establish whether or not actual economic performance measures up to its potential in terms of a number of broad indicators such as total output, income and employment. These are also related to other large issues including money, inflation and international transactions. An important application of macroeconomic analysis is the establishment of macroeconomic policies that guide the economy to reach its potential in terms of employment, economic growth etc.

When assessing a particular economy there are generally five broad categories of indicators that should be covered; economic growth, employment, inflation and the interest rate, our balance of payments reflecting transactions with the rest of the world and the exchange rate, and the distribution of income and wealth.

Economic growth needs to cover a wide area of economic performance that includes the total output produced by an economy given the resources it has at its disposal. These resources include not only natural resources but also capital, labour, technology etc.

The main question to ask

How well is the economy doing given the resources at its disposal and how is this changing over time?

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The main question to ask is how well the economy is doing given the resources at its disposal and how is this changing over time. Some of these resources are largely beyond an economy's control e.g. whether and what type of natural resources it may have, while others are more controllable e.g. level of education and skill of its labour and the technology it produces and uses. South Africa had a rich endowment of natural resources that led to the establishment and development of the economy but the relatively low skill level of its labour resources is a barrier to further growth.

Inflation and interest rates are the two main domestic or internal prices that are studied in macroeconomics. Inflation is important because if it is too high it will erode the spending power of money and if it is too low or disinflationary, it will discourage investment and consumption spending in the economy. Inflation therefore impacts economic growth and employment in the economy and also indirectly determines the level of interest rates, especially in economies with inflation-targeting monetary policy regimes like South Africa. Interest rates are important for a number of reasons, they determine the price of money and also include a determinant of economic risk. What really matters is the inflation adjusted interest rate or real interest rate, since that is the real price paid after taking inflation into account. Generally, the higher the interest rate the riskier an economy is and the lower the levels of investment and consumption expenditure (and therefore growth and employment) would be.

In contrast to the internal prices i.e. inflation and interest rates, exchange rates represent the price of one country's currency in relation to another country's currency or its external price. As with the other macroeconomic variables covered above, the exchange rate is also related to those other macro variables. The more an economy grows and the lower its relative inflation rate is compared to another economy, the stronger its exchange rate would be relative to that country. Exchange rates are a broad topic in themselves and can include analysis of international trade and finance flows, type of exchange rate regime (fixed or flexible) and also the political environment.

The final macroeconomic area to be covered here is the distribution of income and wealth within an economy. This aspect of macroeconomics is far more complex than deciding on whether to adopt a capitalist or socialist political and economic path and involves a study of state-society relations. This area has become a lot more prominent in economic and political discourse over the last few years but has always been an important component of macroeconomic analysis. In an economy, institutions simply refer to rules i.e. the man-made constraints that govern human behaviour.

These rules are important because they shape the incentives in a society. The rules, and the degree to which they are enforced, decide where the economic payoffs are as well as who receives these payoffs, e.g. in doing business with the government, or in innovation and entrepreneurship; in a formal profession or in a crime syndicate.

In general, an economy founded on individualist values tends to incentivise individual effort and innovation, leading to growth, progress and economic opportunities. Economies rooted in collectivist values stifle individual effort and promote a polarising us-versus-them approach to life, which is damaging for economic performance and progress.

As should be clear from the discussion above, these macroeconomic areas contain many broad subdisciplines within economics and are far too vast to be covered in a short illustrative piece such us this one. However, when analysing the state of an economy, a macro overview does provide a more complete structure of the main interrelated areas that are important to take into consideration.

Frank Blackmore
Lead Economist
KPMG in South Africa

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Alan Barr talking about

The discipline of succession

Handing the family business over to a new leader, new management team or a new owner is one of the most challenging topics to face any leader, especially an entrepreneur who has built the business from the ground up. It is also one of the most important factors in the continuity of the family business and therefore should be a well-planned process rather than an event so that it not only deals with continuity but also provides appropriate contingency plans to deal with the unexpected.

The KPMG Private Enterprise article "The courage to choose wisely", published in November 2020 and created in conjunction with the STEP Project Global Consortium provides excellent insight into how families have been able to manage this tricky topic successfully. The article highlights the importance of a succession roadmap as an essential guide in planning for the transition and that it needs to be all encompassing i.e. not only focus on the selection and development of future successors. The succession roadmap needs to clearly document the plan which considers the following:

- protecting the business brand and reputation,
- retaining legacy knowledge, which is one of its competitive advantages,
- clear understanding of what the business needs, both for the current point in the business lifecycle but also for the future, and
- maintaining confidence from financial partners e.g. banks etc. that the transition will not be detrimental to the strength of the business.

The roadmap must also deal with the role of the existing leader once they step away and how they can be redeployed in a structured and meaningful way. It is not easy to simply hand the baton over to someone even with a clear roadmap. Succession plans often fail when the business leader stepping away has no clear purpose or defined role, especially when the business has been part of their life for many years. The succession roadmap needs to consider the following:

- Funding the retirement of the senior leader as they will no longer be earning a salary from the business. A possible solution could be more regular dividends.

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- Avoid interference in day-to-day operations. This should be done in a gradual manner to ensure that the business and the business leader get accustomed to their absence.
- Senior leaders need to support the decisions by the new leadership team, even though their ideas may be different. It is critical that the decisions by the new leader are not overridden as this would undermine their position, cause confusion within the business and ultimately cause damage to the business.
- Involve the senior generation in philanthropic or charitable activities, governance roles e.g. non-executive chairman or a trustee or broader community involvement.

Another key benefit of a succession roadmap is that it provides the opportunity for the family, across all generations, to discuss the future and assess what is right for the business and the family. It not only provides the next generation with the freedom to choose the role they wish to play but also helps with the management of expectations and potential entitlement. The next generation may not wish or even be ready to lead the business, but rather be involved in the governance and therefore the appointment of a non-family leader could be the right decision for the business.

Planning for a successful transition of business leadership, governance or ownership roles is now more important than ever, both from a contingency and continuity point of view as the pandemic has highlighted not only that no one is invincible but also that the way of doing business has changed.

Each family business will have different dynamics which will impact the succession roadmap but the key to a successful transition, will be the disciplined execution of the plan as soon as possible.

Alan Barr
Lead Partner for Private Enterprise Africa and South Africa
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Cecelia Madden explaining

Retirement fund reforms

In 2013 various retirement fund reforms were introduced into the Income Tax Act No. 58 of 1962 ("the ITA") in order to restructure the retirement fund system in South Africa. The effective date for these amendments was, however, postponed until 1 March 2016. These retirement fund reforms are ongoing, the purpose being to encourage savings and preservation of retirement income to reduce vulnerability in retirement.

Historically, prior to the introduction of the retirement fund reforms, the retirement fund system was fragmented, leading to differences in tax treatment and annuitisation requirements between retirement funds. There was accordingly a need to create a uniform retirement fund system across all types of retirement funding vehicles to encourage household savings and improve the financial situation of vulnerable individuals.

Tax treatment of employer and employee retirement fund contributions

The retirement fund reforms which became effective on 1 March 2016 impacted the tax treatment of employer contributions to a retirement fund for the benefit of employees, as well as the deduction available for employer and employee contributions to a retirement fund.

Employer contributions to retirement funds became taxable with the introduction of paragraph 2(l) and 12D to the Seventh Schedule to the ITA. Furthermore, section 11F was introduced into the ITA limiting the deduction available to employees for employee and employer contributions to a retirement fund.

The deduction available

to an employee for contributions to a retirement fund is limited to the lesser of:

a) **R350 000**

b) **27,5 per cent of the higher of the person's –**

- remuneration (as defined in paragraph 1 of the Fourth Schedule to the ITA); or
- taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), as determined before allowing any deduction for:
  - retirement fund contributions under section 11F,
  - foreign taxes on income under 6quat (1C) and
  - donations under section 18A of the ITA, **or**

c) **taxable income**

(excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), before allowing any deduction for –

- retirement fund contributions in terms of section 11F,
- donations in terms of section 18A and
- the inclusion of any taxable capital gain.

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Amendments to the annuitisation rules

In order to encourage preservation of retirement income, the retirement fund reforms introduced into the ITA in 2013 included new rules in relation to the annuitisation requirements when retiring from a pension fund, provident fund and retirement annuity fund. However, due to strong opposition, the proposed annuitisation of provident funds was postponed due to continuing negotiations within the National Economic Development and Labour Council ("NEDLAC").

Annuities from retirement funds fall into a person's gross income in terms of paragraph (a) of the gross income definition. The definition in the ITA of each type of retirement fund (pension fund, provident fund or a retirement annuity fund) provides that up to one-third of the member's total retirement interest may be commuted for a single lump sum payment. The remaining two-thirds must be used to provide a compulsory non-commutable annuity (including a living annuity and/or a guaranteed annuity). This rule is subject to an exception i.e. where the value of the remaining two-thirds does not exceed a pre-determined amount (currently R165 000), the total value of the interest in the fund may be commuted for a lump-sum.

The new tax rules regarding the annuitisation of provident funds came into effect on 1 March 2021, subject to the protection of vested rights. In terms of the annuitisation rules, members of retirement vehicles, irrespective of whether the vehicle in question is a pension fund, provident fund or retirement annuity fund, will be subject to similar rules regarding access to cash on retirement.

In order to protect historical vested rights (i.e. those that arose before 1 March 2021) these are segregated from new rights (those arising after 1 March 2021). 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).

Proposed two-pot system

In the furtherance of government's objective to encourage preservation of an individual's retirement fund interest, a discussion paper was issued by National Treasury on 14 December 2021 which makes proposals on the design structure of a two-pot system for retirement savings. It is proposed that retirement savings be restructured to allow for limited pre-retirement withdrawals. To give effect to these proposals, the Revenue Laws Amendment Bill and the Taxation Laws Amendment Bill were issued on 29 July 2022. These Bills set out wide-ranging proposals in relation to a two-pot retirement system.

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What is the problem?

There are two main concerns with the current policy design of retirement funds:

1) There is insufficient preservation of retirement funds before retirement; and

2) Individuals in financial distress can access all their retirement savings upon resignation, and hence are left with very low, if any, savings when they retire.

Allowing access to the full value of a pension or provident fund upon resignation creates an incentive for employees in financial distress to resign, which increases the risk of future financial problems if they cannot regain employment.

The proposed restructuring of retirement savings aims to address the situation where members of a pension fund or provident fund find themselves in financial difficulties and the only option available to them is to resign from their employment in order to access their retirement savings.

Furthermore, there is no ability for those in financial distress to access any amounts if they have assets within a retirement annuity fund or in a pension preservation fund or provident preservation fund if they have already utilised the once-off withdrawal.

The current proposals

It is proposed that a limited level of access to a person's retirement interest be made available under specific conditions to assist during times when financial difficulties are experienced. However, this should not undermine the long-term objective of building savings for retirement; hence the design of the two-pot system which aims to balance three objectives:

Encourage savings through regular contributions to a retirement fund during a person's economically active years;

Preserve retirement funds as far as possible to fund benefits in retirement; and

Allow partial access to retirement funds to cater for periods of financial distress and improve flexibility.

One of the options currently being considered is a two-pot system, which will enable the restructuring of retirement contributions into two-pots. A member will be able to access one of the accounts at any time while the other account will not be accessible before retirement and must therefore be preserved until retirement.

It is proposed that one-third of any future contributions should go into the accessible retirement fund account (i.e. the savings pot) and the other two-thirds should go into an account that must be preserved until retirement (i.e. the retirement pot). Individuals would be able to make a withdrawal from the one-third savings pot at any time, limited to one withdrawal per 12-month period. The policy intention is that the 12-month period will be a rolling 12-month period. Withdrawals from the savings pot will be subject to employees' tax withholding by fund administrators at marginal tax rates.

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

With regard to the R165 000 de-minimis amount, the policy intent is for this to apply on a cumulative basis to amounts subject to annuitisation (i.e. the retirement pot and two-thirds of the vested pot).

Application of the two-pot system to pension and provident preservation funds

Pension preservation funds and provident preservation funds do not receive contributions, but they will also be required to implement the two-pot system. Transfers into pension or provident preservation funds would mirror the structure of the transferor fund. This would allow members to withdraw from the one-third accessible pot from a preservation fund at any point after the implementation date.

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The once-off withdrawal for the two-thirds preserved pot in pension preservation funds and provident preservation funds would be removed for contributions made after the implementation date. However, the once-off withdrawal would still apply to any vested right amounts that are transferred into these funds from a pension and provident fund (even after the implementation date). Vested rights will also apply to any amounts within the pension preservation and provident preservation funds where the once-off withdrawal has not been exercised.

Application of the two-pot system to retirement annuity funds

To allow for a simpler and more harmonised retirement fund system going forward, it is proposed that retirement annuity funds be included in the two-pot system to assist individuals in financial distress (who are most likely self-employed).

The draft Revenue Laws Amendment Bill, 2022

The draft Revenue Laws Amendment Bill, 2022 (“RLAB”) issued on 29 July 2022 contains the majority of the proposals in relation to the two-pot system and includes proposed definitions for the term “savings pot” and “retirement pot”, as well as “vested pot” and “savings withdrawal benefit” to be inserted into section 1 of the ITA. Government acknowledges that what is referred to as “pots” are in fact components within the retirement fund and the naming conventions will be reconsidered to reflect their component nature.

Various other amendments to the definition of pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund have been proposed to include these concepts and cater for vested amounts and transfers from one fund to another. Additional definitions will, where necessary, be incorporated into the 2022 draft RLAB.

In responding to the request for comments on the RLAB, clarification has been sought by stakeholders in relation to various issues, including technical and practical implementation issues, as well as the timing thereof, bearing in mind that retirement fund rules would need to be amended. Workshops have also been held to discuss the proposals and a consultative process will be undertaken to address certain issues that need to be resolved, for example, how the regime will apply to defined benefit funds.

The 2022 draft Revenue Laws Amendment Bill will be amended to clarify issues raised by stakeholders and government’s policy intention.

Although it was initially proposed that, if enacted, the new legislation would come into operation on 1 March 2023, National Treasury has accepted that this is unrealistic and has extended this by a year. The new proposed effective date is 1 March 2024 and will apply in respect of years of assessment commencing on or after that date.

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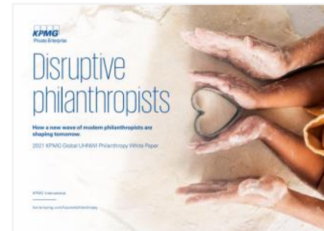
Access to previous publications referred to in the articles.

Global family business tax monitor (2023)(clickable)

Branching out, building up, giving back



Disruptive philanthropists (2021)(clickable)

2021 KPMG Global UHNWI Philanthropy White Paper

Disruptive philanthropists in Africa Webinar Series (2021)(clickable)

How a new wave of modern philanthropists are shaping tomorrow. 3-part Disruptive Philanthropists in Africa webinar series

The regenerative power of family businesses (2022)(clickable)

Transgenerational entrepreneurship

The next generation of work (2022)(clickable)

Are family businesses role models for the future of work?

The courage to choose wisely (2020)(clickable)

Why the succession decision may be a defining moment in your family business

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