JLAW IC 3 of 2026: Taxation Laws Amendment Act No. 5 of 2026

Introduction

The Taxation Laws Amendment Act No. 5 of 2026 (TLAA) was promulgated in Government Gazette No. 54448 on 1 April 2026. As far as retirement funds are concerned, the following changes focus mainly on two-pot related issues.

1. Clarifying the inclusion of an amount assigned to a non-member spouse

Paragraph 2(1)(b)(iA) of the Second Schedule to the Income Tax Act states that the portion of a member's pension interest under a divorce order granted on or after 13 September 2007 under section 7(8)(*a*) of the Divorce Act that is due and payable to the member's former spouse on or after 1 March 2012 must be included in the non-member spouse's gross income. The amount paid to the non-member spouse will then be taxed in their hands on the retirement fund lump sum withdrawal benefit tax table.

The Pension Funds Act has been amended with effect from 1 September 2024 by inserting a definition for "pension interest". This definition does not only apply to a court order granted under the Divorce Act, but also to *a court order granted in respect of the division of assets of a marriage according to the tenets of a religion*, which *inter alia* allows spouses in for example Muslim marriages to claim immediate deduction of their portion of a member's pension interest from a retirement fund. Refer to paragraph 7 of IC 3 of 2025 Pension Funds Amendment Act 31 of 2024 and section 37D-deductions for more information on the deduction of pension interest in favour of a non-member spouse from a member's benefit.

The TLAA amends paragraph 2(1)(b)(iA) of the Second Schedule in alignment with the above change, by also specifically including pension interest assigned to a non-member spouse *in terms of any order made by a court in respect of the division of assets of a marriage according to the tenets of a religion pursuant to its dissolution.*

Effective date: Deemed to have come into operation on 1 September 2024.

2. Savings withdrawal *de minimis* on termination of fund membership

When the two-pot legislation was introduced, paragraph (c) of the proviso to the definition of "savings withdrawal benefit" read as follows:

> *(c) the value of each withdrawal, before taking into account any charges or transaction costs, may not be less than R2000: Provided that where a member terminates their membership in their respective funds within any year of assessment and such member has made a withdrawal from that fund as contemplated in paragraphs (a) or (b) and the value of the member's interest in the savings component is less than R2000, such member may be allowed a second withdrawal of the total balance in the savings component;*

The proviso allowed a member who has already taken a savings withdrawal benefit (hereinafter referred to as a SWB) in a specific tax year to take a second SWB in that same tax year upon the termination of their fund membership if the remaining value of the savings component was less than R2 000. This implied that the balance in the member's savings component had to be at least R2 000 to start with, otherwise the member would not even have had the right to a first SWB.

Section 1(1)(zG) of the Revenue Laws Second Amendment, Act 24 of 2024 amended paragraph (c) by removing the requirement that the member must already have made a withdrawal in that same tax year. Paragraph (c) then read as follows:

> *(c) the value of each withdrawal, before taking into account any charges or transaction costs, may not be less than R2000: Provided that where a member terminates their membership in their respective funds within any year of assessment and the value of the member's interest in the savings component is less than R2000, such member may be allowed a withdrawal of the total balance in the savings component whether or not such member has made a withdrawal from that fund as contemplated in paragraph (a) or (b);*

The proviso allowed both a member who has already made a withdrawal and then had less than R2 000 remaining in their savings component and a member who could not make a withdrawal due to the balance in their savings component being less than R2 000 to take a SWB if their fund membership terminated in that tax year. That amendment came into effect on 1 September 2024.

An unintended consequence of the R2 000 *de minimis* was that a member who had already taken a SWB, left employment in the same tax year and then wanted to exit the fund could not withdraw the remaining savings component if it was more than R2 000. Instead, that balance had to remain in the fund until the next tax year, when it could be withdrawn as a SWB before the member terminated fund membership.

The TLAA removes the R2 000 *de minimis* for members who end their fund membership*. Paragraph (c) now reads as follows:

> *(c) the value of each withdrawal, before taking into account any charges or transaction costs, may not be less than R2 000: Provided that where a member terminates their membership in that fund within any year of assessment, such member may be allowed a withdrawal of the total balance in the savings component whether or not such member has made a withdrawal from that fund as contemplated in paragraph (a) or (b) during that same year of assessment;*

permitting an exiting member to withdraw the full balance of the savings component, regardless of its value or whether a withdrawal has already been made from that fund during the same tax year.

* Either via a group transfer under section 14, an individual transfer or payment of their benefit. These event follow either upon an employer terminating its participation in a fund or a member terminating employment.

From 1 September 2025 to 28 February 2026, the proviso to paragraph (c) applied to a member who had less than R2 000 in their savings component, irrespective of whether they had taken a SWB in that same tax year.

From 1 March 2026, the proviso is expanded and now also applies irrespective of whether the member has R2 000 or more in their savings component.

The following applies to a member who has R2 000 or more in their savings component and whose employment terminates:

A. The member can take all or a portion of their savings component as a SWB on termination of employment. They don't have to terminate their fund membership as well.

B. If the member has already taken a SWB in the same tax year as their termination of employment, they have the following options:

   (1) Do not take a second SWB in the same tax year

      a. Leave their total benefit in the fund;

      b. Take a portion or all of their vested component as a withdrawal benefit and transfer the balance in that component, if any, and the total of the other two components to another fund, **or**

      c. Transfer all three components to another fund.

      The member may then take a SWB in the next tax year, subject to the R2 000 minimum.

   (2) Take a second SWB in the same tax year

      a. Take the full remaining balance of the savings component as a savings withdrawal benefit;

      b. Take a portion or all of their vested component as a withdrawal benefit and transfer the balance or all of that component to another fund;

      c. Transfer the retirement component to another fund, **and**

      d. Terminate fund membership.

The position with regards to a SWB after the TLAA can be summarised as follows:

(1) The normal rules applying to a savings withdrawal benefit:

   (a) Limited to one per tax year.

   (b) Minimum withdrawal amount: R2 000.

(2) Rules on termination of fund membership: neither (1)(a) nor (b) applies.

Note: The amendment only relates to termination of **fund membership**. If a member who has less than R2 000 in their savings component leaves **employment** and decides to stay in the fund, they are not allowed to take a SWB. They can however still take a portion or all of their vested component as a withdrawal benefit.

Effective date: Comes into operation on 1 March 2026 and applies in respect of years of assessment commencing on or after that date.

3. Clarifying payment of death benefits

The introduction to paragraph (g) of the definition of "savings component" in section 1 of the Income Tax Act allows a nominee to elect to have the deceased member's interest in this component paid to the deceased's nominee or dependant as a retirement lump sum under the Second Schedule. However, it does not allow the deceased member's **dependant** to exercise this option, which creates the impression that if the dependant chooses to have the deceased's savings component paid as a lump sum, it will be taxed as ordinary income. This is not aligned with paragraph 3 of the Second Schedule which allows both a nominee and a dependant to choose whether they want that portion of a deceased's death benefit allocated to them paid as a lump sum, an annuity, or a combination of the two, with any lump sum taxable on the retirement fund lump sum benefit tax table.

The TLAA amends the introduction to paragraph (g) by adding the word "dependant". This addition, read with subparagraph (ii), now confirms that a nominee or a dependant can elect to have the deceased member's savings component paid as a lump sum, similar to the other two components, and that any lump sum death benefit will be taxed on the retirement fund lump sum benefit tax table.

Effective date: Deemed to have come into operation on 1 September 2024.

4. Application of three-year rule for preservation funds

Before 1 September 2024, a preservation fund member had the right to make one withdrawal from their preservation fund before they elect to retire. After this withdrawal, the member had another opportunity to take their total remaining benefit as a pre-retirement withdrawal benefit if they ceased to be a tax resident for three consecutive years.

The two-pot legislation allows a preservation fund member access to their vested and retirement components on cessation of South African tax residency for an uninterrupted period of three years, inadvertently taking away the member's right to a withdrawal from the pre-1 September 2024 vested component without any waiting period.

The TLAA amends paragraph (c)(ii)(bb)(A) in the definitions of "pension preservation fund" and "provident preservation fund" to make it clear that the three-year waiting period does not apply to a member's one pre-retirement withdrawal from the vested component, or to a transfer of that component on or after normal retirement age but before the retirement date (a post-retirement transfer), ensuring the protection of their vested pre-1 September 2024 rights. As a result, a preservation fund member may make one withdrawal from the vested component before retirement. If the member later ceases to be a South African tax resident for three consecutive years, they may make a second withdrawal from the remaining vested component and also access the retirement component. Both withdrawals are taxed on the retirement fund lump sum withdrawal benefit tax table.

Effective date: Comes into operation on 1 March 2026 and applies in respect of years of assessment commencing on or after that date.

5. Calculation of retirement *de minimis*

The reference to "**two-thirds** of the member's interest in the vested component" in the calculation of the retirement *de minimis* in all the fund definitions is incorrect as pointed out in paragraph 3B of JLAW IC 1 of 2026: Revenue Laws Amendment Act No. 6 of 2025.

When determining the one-third lump sum that a member may take from their vested component on retirement, the T-day vested portion is determined from the member's **full** vested component as opposed to only two-thirds thereof.

The TLAA amends the definitions of all the different types of funds by replacing the words "**[two-thirds of]** the member's interest in the vested component" with "the total member's interest in the vested component so that the relevant part of the definitions now reads as follows:

> *Provided that in determining the value of the total member's interest in the vested component, an amount calculated as follows must not be taken into account—*

This corrects the misalignment between the intention as applied by SARS when applying for a tax directive and the legislation.

The application of the *de minimis* on retirement can be illustrated as follows:

Member's benefit:

Vested component	R480 000
Vested	R360 000
Non-vested	R120 000
Savings component	R100 000
Retirement component	R200 000
TOTAL	**R780 000**

The member may not commute more than one-third of the non-vested part of their vested component, i.e. R40 000, unless the *de minimis* applies.

De minimis calculation:

two-thirds of non-vested part of vested component + retirement component
R80 000 + R200 000 = R280 000.

This is more than the *de minimis* of R240 000, which means that the member will have to use at least R280 000 of their total benefit to purchase an annuity.

Effective date: Deemed to have come into operation on 1 September 2024.

6. Technical corrections

a. Delete the reference to paragraph *(c)* of the proviso to the definition of 'savings component' from paragraph (a) of the definition of "member's interest in the savings component.

Paragraph (c), which stated that *payments or transfers from a similar savings component to a pension preservation fund or provident preservation fund by or on behalf of that member on or after 1 September 2024 is allocated to this component* was deleted under section 1(1)(zF) of the Revenue Laws Second Amendment, Act 24 of 2024. The TLAA aligns the definition of "member's interest in the savings component" by deleting the reference to the deleted paragraph (c).

b. Substitute the reference to "individual contract policy basis" in the proviso to paragraph 6B of the Second Schedule with "individual policy contract basis"

The change to the order of the words aligns with the correct descriptor of the concept.

Effective date: Comes into operation on 1 March 2026 and applies in respect of years of assessment commencing on or after that date.

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