



REPUBLIC OF SOUTH AFRICA

**DRAFT EXPLANATORY MEMORANDUM TO DRAFT NOTICE
ISSUED IN TERMS OF PARAGRAPH 2D OF THE SECOND
SCHEDULE TO THE INCOME TAX ACT, 1962 (ACT NO 52 OF 1962)**

6 MARCH 2023

DRAFT EXPLANATORY MEMORANDUM TO DRAFT NOTICE ISSUED IN TERMS OF PARAGRAPH 2D OF THE SECOND SCHEDULE TO THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962)

1. BACKGROUND

In 2008, changes were made to paragraph 2C of the Second Schedule to the Income Tax Act, 1962 (Act no 58 of 1962) (the Act) to make provision for the Minister of Finance to prescribe an event by notice in the Government Gazette in terms of which the so called “bulking settlement payments” by the retirement funds will qualify for income tax exemption.

Consequently, on 1 March 2009, the Minister of Finance published a notice in Government Gazette No. 32005 (GG 32005) prescribing an event referred to in paragraph 2C of the Second Schedule to the Act in terms of which bulking settlement payments qualified for income tax exemption.

2. REASONS FOR CHANGE

When the changes were made in 2008 to paragraph 2C of the Second Schedule to the Act and when the notice was issued by the Minister of Finance in GG 32005 on 1 March 2009, some retirement funds were no longer registered. The fund administrators could not pay the above-mentioned bulking settlement payments to the relevant retirement fund to be distributed to its former members due to the retirement funds already being deregistered. These bulking settlement payments are currently still held by the respective fund administrators.

In view of the fact that changes made in 2008 to paragraph 2C of the Second Schedule to Act made provision for the Minister of Finance to prescribe an event by notice in the Government Gazette in terms of which the bulking settlement payments will qualify for income tax exemption only applied to former members of active/registered retirement funds, further changes were required in the Second Schedule to the Act to make

provision for tax exempt treatment of bulking settlement payments to former members of deregistered funds.

Consequently, in 2019, changes were made in the Second Schedule to the Act by inserting a new paragraph 2D through section 49 of the Taxation Laws Amendment Act, 2019 (Act 34 of 2019), allowing the Minister of Finance to issue a notice in the Government Gazette making provision for the payment of bulking payments currently held by fund administrators on behalf of deregistered funds to qualify for tax exemption, provided that they meet the criteria to be determined by the Minister of Finance in the notice. In view of the fact that Government does not wish to condone non-compliance, in 2019, when the changes were made in paragraph 2D of the Second Schedule to the Act, Government stated in the Explanatory Memorandum to the Taxation Laws Amendment Act, 2019 (Act 34 of 2019) that the proposed notice will be the last opportunity provided in this regard to rectify the error.

3. PROPOSAL

In order to ensure consistent tax treatment in respect of bulking settlement payments, it is proposed that the Minister issue a notice on tax exemption of bulking settlement payments to former members of deregistered retirement funds in terms of paragraph 2D of the Second Schedule to the Act, provided that they meet the following criteria determined by the Minister of Finance in the notice:

- bulking settlement payments relate to amounts that became due and payable by the administrator of retirement funds to the retirement funds before 1 January 2008, and;
- such bulking payments have not been allocated due to the fact that the funds have been deregistered; and
- the administrator of the retirement funds has entered into an agreement with the FSCA to make such bulking settlement payments directly to the former members of the deregistered funds.

In view of the fact that Government does not wish to condone non-compliance, this will be the last opportunity availed in this regard to rectify the error. As such, it is

proposed that once the bulking payments are finalized, the provisions relating to bulking payments in paragraphs 2C and 2D of the Second Schedule to the Act should be repealed

4. EFFECTIVE DATE

The proposed notice will come into operation on the date of publication of the final notice in the Government Gazette.