

Quarter 3 2024

Mark Wenning's

Financial Informer



Mark Wenning ✆ 010 234 5650

Certified Financial Planner®

office	Ground Floor Pharos House 70 Buckingham Terrace Westville
email	markw@nedbank.co.za
mobile	082 900 0332
web	www.wenning.co.za
assist	Janet Rackham ✆ 0102345653 janetra@nedbank.co.za

Going two pot (not really)

The traditional South African retirement savings format is about to change. The implementation date of the new system is set for 1 September 2024. All current and future retirement fund members will be impacted by the change, so it is important to understand the new structure. Change is always unsettling so this article aims to simplify, clarify and, hopefully, calm your nerves.

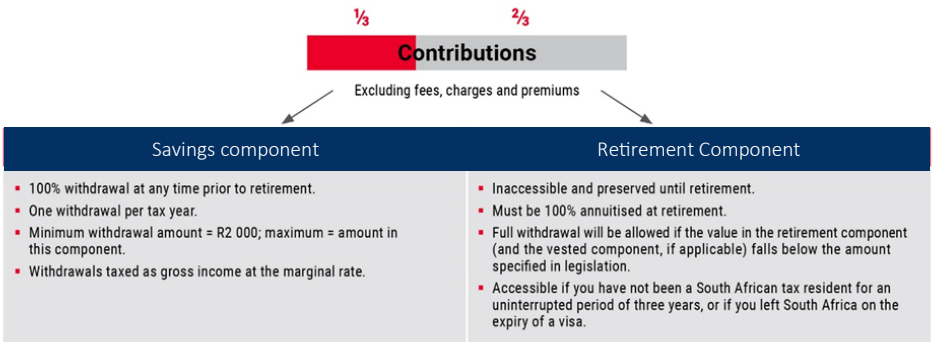
The intention of the new two-pot retirement savings system in South Africa is to promote the preservation of retirement fund investments until members retire, while also allowing them access to a portion of their accumulated savings during their working years. From the date of the implementation of this system, all contributions to provident, pension and retirement annuity funds will be split into two components: One-third of the contributions will be credited to a savings component, which members can access before retirement in the event of an emergency, and the remaining two-thirds will be credited to a retirement component, which will be inaccessible before a member retires, and at retirement must be used to purchase a pension-providing product. The features of each component are shown in Image 1.

What complicates matters is that government needs to cater to the rules that are currently in place and manage the transition to a world where the entire retirement fund system works in the way described.

Moving over and your vested rights

Vested rights refer to the rights that you already have in relation to your retirement investments, which the new legislation protects. All your retirement investments immediately prior to the two-pot

Image 1: Allocation of contributions on and after the implementation date of the two-pot system



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system start date will form part of your vested component, and all the rules that currently apply to your retirement investments (including those relating to accessibility and tax) will continue to apply to this component.

If you are a member of a provident fund, and you were a member of that fund and were 55 or older on 1 March 2021, you will be excluded from the two-pot system, unless you decide that you want to participate. Exclusion means that nothing will change for you and all the rules currently in place for your retirement fund account will continue to apply. If you choose to participate in the two-pot system, from the month after you made your election, your contributions will be allocated to the savings and retirement components, while your existing benefit will be vested.

While the savings component allows you access, it is prudent to guard against thinking of it as a discretionary savings account.

Some access at implementation

Members of retirement funds will be able to withdraw a small portion of their existing savings immediately once the two-pot system is implemented. This is commonly referred to as "seed capital" and is reflected in **Image 2**.

There are a few things about this withdrawal benefit that are important to bear in mind:

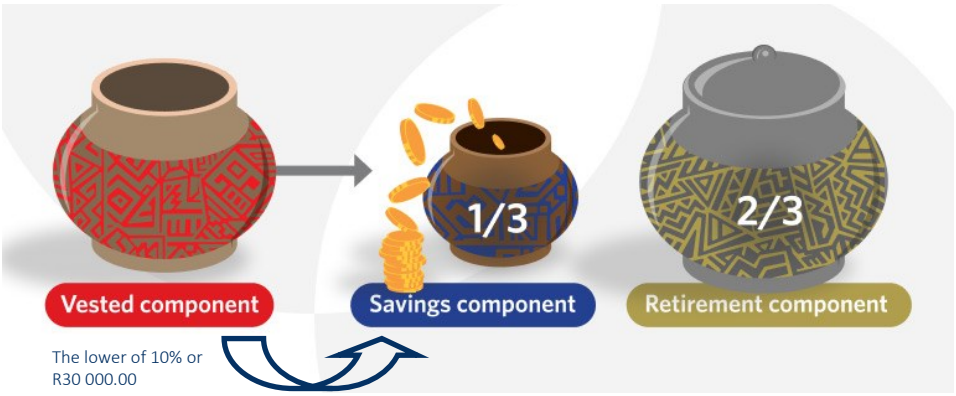
1. Value limit

The seed capital will be limited to 10% of the amount in your retirement fund account on 31 August 2024, subject to a maximum amount of R30 000. For you to have access to a withdrawal benefit of R30 000, the value of your retirement fund account on 31 August 2024 needs to be at least R300 000.

Below are some examples of how much cash will be accessible depending on the value of your retirement fund account:

R30 000 in your account: R3 000 will be accessible

Image 2: Seeding the savings component





Tulip Fever (2017)

Set in 17th-century Amsterdam, *Tulip Fever* is a drama that takes place in the middle of the famous tulip bubble. It shows the extreme decisions people can take when driven by greed and fear.

We can see how several misleading statements about the financial markets originated, such as *this time is different*, or *profits are guaranteed*.

Although it received unfavorable reviews, *Tulip Fever* has an excellent cast, including Christoph Waltz, Alicia Vikander, Tom Hollander and Zach Galifianakis.



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R150 000 in your account: R15 000 will be accessible

R900 000 in your account: R30 000 will be accessible

2. Tax

Any amount accessed in cash as a savings withdrawal benefit will be taxed at your marginal income tax rate, which will depend on your taxable income for the tax year, including the withdrawal amount. The retirement fund or its administrator will apply for a tax directive from the South African Revenue Service (SARS) and deduct the tax before paying you your benefit.

3. Timing

The current version of the legislation permits retirement funds to allocate the seed capital to the savings component (to making it accessible as a withdrawal benefit) *on or after* 1 September 2024. If a retirement fund's rules have not yet been approved by the Financial Sector Conduct Authority, or the fund's systems cannot cater for the seed capital on 1 September 2024, withdrawals may be delayed.

The two-pot system has the potential to create good outcomes for retirement fund members …

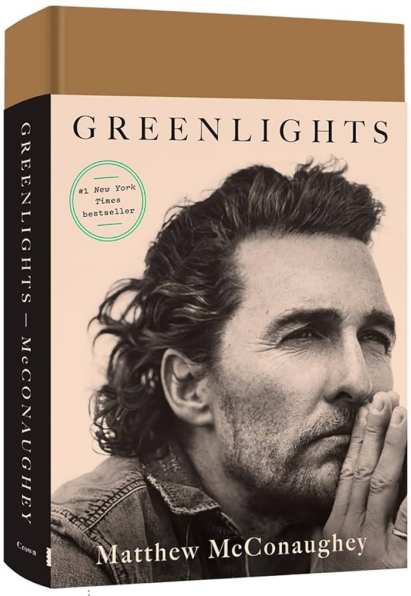
SARS is in the process of designing its systems and processes so that it can issue directives setting out the amount of tax to be deducted from the savings withdrawal benefit. SARS will require your specific information to issue a directive. If certain information has not been provided to the retirement fund, the withdrawal will not be processed.

The pros and cons

The two-pot system has the potential to create good outcomes for retirement fund members, helping those who desperately need some access, while ensuring greater levels of preservation due to the inaccessibility of the retirement component.

Having some access to your retirement investment without having to resign from employment may assist you in times of need. However, it is important to remember that the intended purpose of your retirement investment is to provide you with an income in retirement. While the savings component allows you access, it is prudent to guard against thinking of it as a discretionary savings account. Each time you access a savings withdrawal benefit, the amount available to provide you with an income in retirement will be reduced. In addition, that savings withdrawal benefit will be taxed and has the potential to push you into a higher tax bracket, depending on your other/total income and the value of the withdrawal.

It is critical to understand that members' ability to withdraw from their savings component hinges on many factors, including the Financial Sector Conduct Authority being able to timeously approve fund rule changes and SARS being able to issue tax directives.



Greenlights: The art of running downhill

"I've been in this life for fifty years, been trying to work out its riddle for forty-two, and been keeping diaries of clues to that riddle for the last thirty-five. Notes about successes and failures, joys and sorrows, things that made me marvel, and things that made me laugh out loud. How to be fair. How to have less stress. How to have fun. How to hurt people less. How to get hurt less. How to be a good man. How to have meaning in life. How to be more me.

Hopefully, it's medicine that tastes good, a couple of aspirin instead of the infirmary, a spaceship to Mars without needing your pilot's license, going to church without having to be born again, and laughing through the tears.

It's a love letter. **To life**".



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It’s only money honey

Easy enough for Elvis to say! South Africa’s legal system has in the past few decades progressed in leaps and bounds in at-tempting to ensure equality between the sexes before the law. Until the introduction of the Accrual System into our marriage law, the legal position of married women in South Africa was one which would make even the most ardent modern chauvinist blush.

Marriage and the law in South Africa

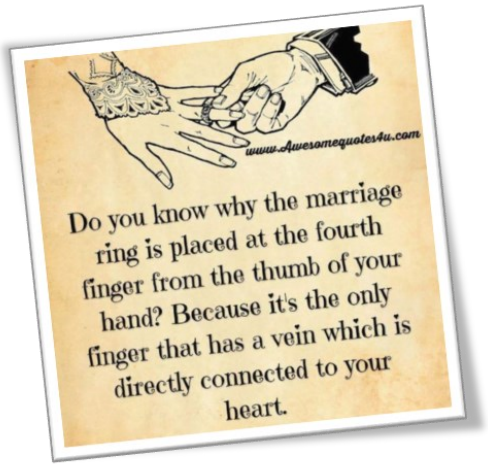
The legal position prevailing in most legal jurisdictions, even as recently as the last century, can be seen from the comment by an eminent American law professor who, writing in 1917, commented that “husband and wife are one and that one is the husband”. In South Africa, prior to 1984, our law usually left a prospective bride (particularly one intending to be a full-time mother and care-giver) with a difficult choice to make between the available marital regimes.

In the absence of an antenuptial agreement, the common law position then prevailing was that which had existed for centuries: upon marriage the spouses’ estates became one (called “community of property”), over which the husband had sole control in terms of his so-called “marital power”. Our law’s wedding gift to the bride was to effectively bestow on her the legal capacity of a child. A betrothed couple could avoid this regime from applying to their union by entering into an antenuptial agreement prior to tying the knot.

By excluding “community of property” in the contract, their estates would remain separate thus giving the wife full legal capacity and complete control over her estate. An intending bride was thus often caught between “the devil” (community marriage with little legal power over the joint estate and diminished legal status) and the “deep blue sea” (marriage out of COP – full legal capacity over her separate estate but having no claim against her husband’s assets upon his death or their divorce).

The introduction of “the Accrual System”

In 1984, the Matrimonial Property Act was passed, dragging our marital law somewhat belatedly into the 20th century. For marriages in community of property, the Act abolished the husband’s “marital” power over his wife and their joint estate. A system of joint (and equal) administration over the community assets was introduced for all such marriages (even for “in community” marriages entered into prior to 1984). The Act also gave spouses who chose to marry out of community of property another option: the “Accrual System”.



The Wedding ring

Almost 5000 years ago, ancient Egypt was the first known culture where people would exchange "rings of love" often made of woven reeds or leather. It is said that the Egyptians saw the ring, a circle, as a powerful symbol. The band with no end representing eternal life and love, and its opening representing a gateway to worlds unknown. Rings were highly regarded in their culture, especially scarabs and signets.



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Most expensive divorces

Bill Gates's divorce in 2021 from Melinda Gates is the most expensive divorce with Melinda getting $76 billion.

Jeff Bezos's divorce in 2019 from MacKenzie Bezos; is the second most expensive divorce with MacKenzie Bezos getting $38 billion ($45.3 billion inflation adjusted).

Alec Wildenstein's divorce in 1999 from Jocelyn Wildenstein; $3.8 billion ($7 billion inflation adjusted).

Kim Kardashian and Kanye West's $2.7 billion divorce, plus $200,000 per month child support paid by West.

Rupert Murdoch's divorce in 1999 from Anna; estimated at $1.7 billion ($3.1 billion inflation adjusted).

Bill Gross's divorce in 2017 from Sue; estimated at $1.3 billion ($1.6 billion inflation adjusted).

Bernie Ecclestone's divorce in 2009 from Slavica; estimated at $1.2 billion ($1.7 billion inflation adjusted).

Steve Wynn's divorce in 2010 from Elaine; estimated at $1 billion ($1.4 billion inflation adjusted).

What is the Accrual System?

The Accrual System, based on the German model, has been described as one of "deferred sharing of profits". It automatically applies to all marriages out of community of property after 1 November 1984, unless specifically excluded by antenuptial contract. With the Accrual System, during the marriage the spouses are fully independent and there is a complete separation of property.

On dissolution of the marriage either by death or divorce, the gains made during the marriage are shared. The Accrual System thus recognises that marriage is a partnership but assets acquired before the marriage are not shared.

How does the Accrual System work?

Each spouse declares a commencement value for his or her estate. On dissolution of the marriage each spouse's estate is again valued. The spouse whose estate shows the smaller gain is given a claim against the spouse whose estate shows the greater gain, for an amount equal to one-half of the difference between the two gains or "accruals". The commencement values are adjusted for inflation and the "dissolution" values exclude certain assets like inheritances (see Accrual example on page 5). As the example shows, it's not always the "wealthier" spouse overall (i.e. the husband above) who has to pay the Accrual claim on dissolution!

The Accrual System effectively ensures that spouses share equally in the wealth they create during the marriage.

What happens if a spouse dies?

While most people think of an Accrual claim in the context of a divorce, probably the most common way in which a marriage is dissolved is by death of one (or tragically both) of the spouses.

On death of a spouse, the Accrual claim is calculated and depending on their respective gains, could result in either (i) a claim being lodged by the surviving spouse against the estate of the deceased spouse (if the survivor shows the smaller gain) or alternatively, (ii) the survivor might be required to make payment into the deceased spouse's estate (if the latter shows the smaller gain). Some antenuptial contracts provide that if the survivor has the greater accrual, then the deceased spouse's estate's accrual claim is forfeited.

How does the Accrual claim affect one's testamentary planning?

The possible impact of an accrual claim upon death of either of the spouses is an important issue commonly overlooked in one's testamentary planning. The rule is that the Accrual claim is calculated and takes effect before applying the deceased spouse's Will.

The Accrual claim, if it is due to the surviving spouse, constitutes a claim against the deceased estate which ranks in preference behind that of other creditors but ahead of heirs.

In other words, the Accrual claim due to a surviving spouse must be paid before any other heirs such as children, parents and other can inherit. Where married couples leave their entire estates to one another in



their Wills, the effect of the Accrual claim is academic — whatever the result of the calculation, the deceased spouse's estate ends up in the hands of the survivor.

Planning for the Accrual claim

By properly planning for one's death, one can ensure that the effects of an accrual claim are dealt with — an antenuptial contract and Will can ensure there are no unintended problems, and a life assurance policy can ensure that there is enough cash available to meet any possible Accrual claim.

We all hope that love is forever but it doesn't hurt to be prepared if it doesn't.

Accrual Example

A simple example illustrates how this works:

- Husband enters marriage with a net estate worth R2,000,000, wife with R500,000.
- Upon husband's death his estate is worth R2,500,000 and wife's R2,000,000.
- Gains (ignore inflation) = husband R500,000 and wife R1,500,000
- Difference between gains = R1,500,000 – R500,000= R1,000,000
- Wife has gained more, therefore husband can claim one-half of the difference of R1,000,000 from wife = R500 000.

The husband would have a claim against the wife's estate for R500,000 which would be due to him before the heirs in terms of the wife's Will (e.g. children from a previous marriage) receive their inheritances

What about the kids?

There are some particular dangers in overlooking an Accrual claim where (step)/children are also heirs…..

Example 1

A husband dies and, having intended to leave his estate in equal shares to his wife and a child from his previous marriage, made provision for this in his Will. If he hadn't allowed for his wife's accrual claim against his estate, she will receive, in addition to her accrual claim, half of the balance too—potentially more than was intended, leaving the child less.

Example 2

A wife dies leaving her estate to her children from her previous marriage, having thought that her husband had sufficient assets of his own. However, she overlooked her Accrual claim against her husband's estate and he would have to pay the amount of the claim into the estate to be inherited by his stepchildren.



Love is in the air

According to Billboard magazines 50 greatest love songs of all time, it is the 1981 Lionel Ritchie / Diana Ross theme song Endless Love that hits the top spot.

Producer Jon Peters and director Franco Zeffirelli asked Lionel Richie to compose an instrumental along the lines of the theme from Love Story for the movie Endless Love starring Brooke Shields. When Zeffirelli changed his mind and asked Richie if he would add lyrics, the Motown star agreed to write some. Then Zeffirelli made one more request – to add a female singer, someone like Diana Ross.