Let’s talk
For a deeper discussion of how this issue might affect your business, please contact:

Gavin Duffy
Johannesburg
+27 (0) 11 797 4271
gavin.duffy@pwc.com

Lavania Naiker
Johannesburg
+27 (0) 11 797 4856
lavania.n.naiker@pwc.com

Danielle Botha
Johannesburg
+27 (0) 11 797 5624
danielle.botha@pwc.com

In brief
National Treasury has proposed a legislative amendment that could potentially result in an individual being in a position of double tax on their withdrawal or periodic payments from a South African retirement fund on cessation of South African tax residency.

General
In terms of Section 9(2)(i) of the Income Tax Act No. 58 of 1962 (“the Act”) lump sum, pensions or annuities payable to an individual from a South African retirement fund are taxable in South Africa. This is subject to the condition that the services related to that amount so payable were rendered within South Africa.

Complications, however, can arise in cases where an individual ceases to be tax resident and where the taxation rights of more than one country need to be considered.

In such cases taxation rights in the individual’s new location would need to be considered – under both their domestic law and any related double taxation treaty (“DTT”).

Article 18 of the OECD Model Tax Convention 2017 (“MTC”) provides that payments from retirement funds are taxable only in the country that the individual is tax resident and does not give consideration to the source of services rendered related to the payment.

Should an individual therefore move to and be considered tax resident in a country whose Double Tax Treaty (“DTT”) is modelled according to the MTC, the individual may potentially only be taxed on any payments from the fund in the country in which they are tax resident. This will result in a loss to the South African fiscus.

National Treasury has proposed a South African legislative amendment to secure South African taxing rights in such a scenario.
Proposal

National Treasury announced in this year’s Budget that this would be addressed by amending the Act. The Draft Taxation Laws Amendment Bill, 2021 ("DTLAB") released for public comment on 28 July 2021 proposes the insertion of a new section 9HC as follows:

• On the day before the individual ceases South African tax residency, the individual will be deemed to have withdrawn from all South African retirement funds in which the individual has an interest. This will result in the individual’s total interest in the retirement funds being determined at that time and subject to South African tax ("retirement lump sum withdrawal tax") as a retirement fund lump sum benefit or a retirement fund lump sum withdrawal benefit.

• If the individual does not elect to make an actual withdrawal from the retirement fund and only when they die or retire from employment, the individual's liability for payment of the lump sum withdrawal tax will be deferred until the retirement fund makes payment to the individual upon retirement or when payment is made to the individual's estate upon death.

• When actual payment is made, the tax liability will be calculated based on the related lump sum tables (in the case of a lump sum payment made) or based on the related income tax rate (in the case of an annuity payment from the retirement fund). Should there be a difference between the liability for the retirement withdrawal tax per the deemed date of withdrawal and the date that payment is actually made, a tax credit mechanism will be used to compensate for this difference.

Takeaway

While there may be subsequent amendment or clarity prior to implementation of this amendment effective 1 March 2022, individuals with South African retirement savings who are intending on ceasing South African tax residence post this date should take note of the proposed changes and seek advice on related implications.

Adverse tax (including potential double taxation) and cash flow considerations should be assessed in the event of taxation rights arising to the individual’s new country of residence under domestic and double taxation provisions.