TAX

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EXEMPTION OF FOREIGN PENSIONS RECEIVED BY SOUTH AFRICAN RESIDENTS

Over the past few years there has been uncertainty surrounding the circumstances of South African residents receiving pension payments for services rendered or partly rendered outside South Africa. The South African Revenue Service (SARS) has previously taken the view that if the fund was located in South Africa, then the source was deemed to be in South Africa and therefore rendered the total amount of the pension payment as being taxable in South Africa, irrespective of the fact that the pension may have related partly to services that were rendered outside the country.

Binding General Ruling No 25 (Ruling), issued by SARS on 14 November 2014, provides clarity on the interpretation and application of the words "from a source outside the Republic" contained in s10(1)(gC) of Income Tax Act, No 58 of 1962 (Act). It is now indicated that the reference to 'source' in the Act refers to the originating cause which gave rise to the pension income. In terms of the Ruling, a formula will be used to determine the portion of the pension that will be exempt.

Section 10(1)(gC) of the Act does not refer to the source rule contained in s9(2)(i) of the Act. Section 10(1)(gC) of the Act exempts from the payment of income tax any pension received by or accrued to any resident from a source outside South Africa as consideration for past employment outside South Africa.

Section 9(2)(i) of the Act in turn provides that an amount is deemed to have been received by or accrued to a person from a source within South Africa if that amount constitutes a pension or annuity and the services in respect of which that amount is so received or accrued were rendered within South Africa. However, if the amount is received or accrued in respect of services which were rendered partly within and partly outside South Africa, only a relevant portion will be from a source within South Africa.

In the Explanatory Memorandum on the Taxation Laws Amendment Bill 2011, pursuant to which s9(2)(i) was introduced, it was indicated that the source of pension payments will be based on the source of the underlying services giving rise to those payments.

Section 9(2)(i) of the Act specifically provides for when a pension payment is deemed to be sourced in South Africa and when not and the section provides for an apportionment of the pension concerned in respect of services that were rendered partly within and partly outside South Africa.

The ruling applies from the date of issue (14 November 2014) and will apply until it is withdrawn or the relevant legislation is amended.

Accordingly, recipients of pension benefits should ensure that the correct formula is applied in determining which portion of the pension benefit received may be exempt on the basis of services having been rendered outside South Africa.

However it appears that the Ruling did not deal with the receipt of lump sum payments.

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DEFERRAL OF THE IMPLEMENTATION OF THE ELECTRONIC TAX COMPLIANCE STATUS SYSTEM

Tax clearance certificates (TCCs) are issued by the South African Revenue Service (SARS) to, *inter alia*, validate the status of a taxpayer and confirm that such taxpayer's tax affairs are in order.

TCCs are, almost without exception, required for tender or bid applications, to reflect good standing, foreign investment and for emigration purposes. A TCC is only valid for one year from the date of issue in respect of a tender and/or good standing, provided the taxpayer remains compliant with SARS requirements.

On 15 July 2014, the National Treasury (Treasury) issued National Treasury Instruction No 3 of 2014/2015 (Treasury Instruction) on tax compliance measures for persons doing business with the State. It is stated that the Treasury Instruction was issued to strengthen the measures to be implemented by accounting officers of departments and constitutional institutions as well as accounting authorities of the public entities listed in Schedules 2 and 3 to the Public Finance Management Act, No 1 of 1999, to ensure that all persons conducting business with the State are tax compliant.

In order to reduce supply chain management related fraud and to ensure that persons conducting business with the State do not abuse the supply chain management system, the Treasury Instruction provided that institutions would no longer be required to obtain a hard copy of an original and valid TCC, as they would be able to check the tax compliance status of bidders through an electronic Tax Compliance Status System (TCS system).

According to the Treasury Instruction, SARS would no longer issue paper-based TCCs with effect from 1 April 2015. A taxpayer, who requires his or her tax compliance status to be disclosed to a department, constitutional institution or public entity for purposes of submitting a bid or to confirm his or her good standing, would have to request a unique security Personal Identification Number (PIN) from SARS. As the TCS system would allow for the online real-time verification of a taxpayer's tax compliance status, the accounting officer or accounting authority of such department, constitutional institution or public entity would be able to use the PIN in order to verify the tax compliance status of the taxpayer. The implementation of the TCS system was set to take effect from 1 November 2014.

However, it is interesting to note that on 31 October 2014, Treasury issued National Treasury Instruction No. 3A of 2014/2015 (Treasury Instruction 3A) which served as a clarification regarding the implementation of the TCS system. According to Treasury Instruction 3A, the implementation of the TCS system would be deferred and further instructions on its applicability and implementation date would be issued at a later date. Accounting officers of departments, constitutional institutions, accounting authorities of Schedule 2 and 3 public entities and heads of provincial treasuries were instructed to halt the Treasury Instruction with immediate effect as both Treasury and SARS were still evaluating the implications of the TCS system. It will be interesting to see whether the TCS system will indeed be implemented at a future date and if so, whether such implementation will ease the difficulties faced by taxpayers when applying for TCCs.

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