

11 DECEMBER 2020

# TAX & EXCHANGE CONTROL ALERT

## IN THIS ISSUE

### Planning ahead: SARS issues binding private ruling regarding pension payments from a foreign pension fund

In our Tax & Exchange Control Alert of [23 October 2020](#), we discussed the amendments that would be made to the provisions of the Income Tax Act 58 of 1962 (Act) dealing with withdrawal of retirement funds upon emigration. These amendments will come into effect once the Taxation Laws Amendment Bill (B27-2020) has been passed by both houses of Parliament, signed into law by the President and promulgated in the Government Gazette.

## Planning ahead: SARS issues binding private ruling regarding pension payments from a foreign pension fund

On 22 November 2020, SARS issued Binding Private Ruling 355 (Ruling), regarding the taxation of amounts that accrue to a South African resident from a foreign pension fund.

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In a related matter, it is interesting to note that on 22 November 2020, SARS issued Binding Private Ruling 355 (Ruling), regarding the taxation of amounts that accrue to a South African resident from a foreign pension fund. We discuss this Ruling below.

### Facts of BPR 355

- The applicant in the Ruling is a South African tax resident individual, but a citizen of country X (Applicant).
- He was employed in country X for 15 years by Company A, a company resident in country X and was a member of a foreign pension fund (Fund), which is also resident in country X.

- The Applicant rendered services solely to Company A for the first 12 years of his employment, but from year 13 to 15, he was seconded to Company B, a company resident in South Africa (SA), while he was employed by Company A.
- The Applicant became ordinarily resident in SA after year 15 and became permanently employed with Company B.
- During the first 12 years of the Applicant's employment, Company A made contributions in respect of the Applicant to the Fund and from year 13 to 15, Company B made pension contributions to the Fund in respect of the Applicant.
- The Applicant made no contributions to the Fund as it was a non-contributory fund.
- The Applicant has reached the retirement age as stipulated by the rules of the Fund, but pension payments have not yet accrued to him as he first needs to make an election in this regard.

### Legal framework

In terms of section 10(1)(gC)(ii) of the Act, a lump sum, pension or annuity received by or accrued to any South African tax resident from a source outside SA will be exempt from normal tax in the hands of such resident if the following requirements are met:

- The amount constitutes consideration for past employment outside SA;

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The Ruling is welcomed in that it explains how section 10(1)(gC)(ii) practically applies.

- The amount must not accrue to or be received by the resident from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in section 1(1) of the Act (Retirement Fund) or a company that is tax resident in SA and that is registered in terms of the Long-Term Insurance Act as a person carrying on long-term insurance business; and
- If the amount accrues to or is received by the resident from any Retirement Fund or an insurer referred to in the previous bullet, it will still be exempt from normal tax in the hands of the South African tax resident, if it was transferred to that fund or that insurer from a source outside SA in respect of that resident.

### Ruling

SARS ruled as follows:

- The pension amounts that will accrue to the Applicant from the Fund must be included in the Applicant's gross income subject to the exemption under section 10(1)(gC) applying proportionally;
- The portion of each pension amount that will accrue from the Fund that is in respect of past employment services rendered outside of SA will be exempt from normal tax under section 10(1)(gC); and
- The formula to determine the exempt amount is the following:

Period of services rendered outside SA/Total period during which services were rendered x Amount of lump sum or pension accrued or received = Amount exempt under section 10(1)(gC).

It should be noted that the Ruling is subject to the additional condition and assumption that the Applicant is ordinarily resident in SA and not deemed to be exclusively a resident of country X or another country for purposes of the application of any double tax agreement between SA and another country.

### Comment

The Ruling is welcomed in that it explains how section 10(1)(gC)(ii) practically applies. It also appears that the formula used in the Ruling is the same formula set out in Binding General Ruling 25, where SARS explains its interpretation of section 10(1)(gC)(ii).

Furthermore, the Ruling raises important practical issues to consider for South Africans intending to work temporarily abroad. Where such a person renders services abroad and the person's employer makes contributions towards a retirement fund as part of the person's remuneration benefits, it may be better to contribute to a foreign retirement fund and not to a South African retirement fund, so that the exemption in section 10(1)(gC)(ii) will apply. If the services are rendered outside South Africa, but the contributions are made to a South African retirement fund, the amounts received from the retirement fund in future will likely not qualify for exemption under section 10(1)(gC)(ii).

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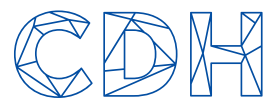
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