

Legal Report March 2017

Insurance

Financial Planning

Retirement

Investments

Wealth

Newsletter of Sanlam Employee Benefits: Legal

1. Binding General Ruling 25 of SARS: Exemption in respect of foreign pensions

Section 10(1)(gC)(ii) of the Income Tax Act exempts from tax any lump sum or pension received by or accrued to a South African tax resident from a source outside South Africa as consideration for past employment outside South Africa.

In terms of the Taxation Laws Amendment Act, 2016, the exemption will as from 1 March 2017 no longer apply if the benefits are provided by a South African retirement fund, except in respect of any amount transferred to the fund from a source outside South Africa. The Explanatory Memorandum to the Taxation Laws Amendment Bill stated that the exemption will apply only to benefits from foreign retirement funds but the amended section 10(1)(gC)(ii) does not expressly refer to amounts transferred from foreign funds and instead refers to amounts transferred from a source outside South Africa.

In terms of the ruling the term “source outside the Republic” in section 10(1)(gC)(ii) refers the originating cause which gives rise to the fund benefits, i.e. where the services have been rendered. The ruling states that the following formula must be used to calculate the portion of a benefit that will be exempt due to services rendered outside South Africa:

$$\frac{\text{Foreign services rendered}}{\text{Total services rendered}} \times \text{total benefit received or accrued}$$

Certain aspects of BGR 25 require clarity and industry bodies will approach SARS in this regard.

2. Tax on living annuities held by trusts

SARS recently confirmed that a living annuity can be paid to a trust. SARS was then requested to indicate if they will provide tax directives to administrators in respect of living annuities owned by trusts. Where the beneficiary or beneficiaries of a trust have vested rights to the income of the trust, such income is taxable in their hands.

During March 2017 SARS advised that the procedure to be followed in this regard is as follows:

- The trust must register for PAYE;
- The beneficiaries' details must be provided;
- The application for a directives must be submitted at the relevant SARS Branch Office; and
- Once the case number is issued by SARS, that same case number must be sent to dpietersen@sars.gov.za.

Retirement funds or other clients requiring more information should not hesitate to contact their consultant.