

DRAFT BINDING GENERAL RULING (INCOME TAX) ...

DATE:

ACT : INCOME TAX ACT 58 OF 1962

SECTION : SECTION 1(1) – DEFINITIONS OF “PENSION FUND”, “PENSION PRESERVATION FUND”, “PROVIDENT FUND”, “PROVIDENT PRESERVATION FUND” OR “RETIREMENT ANNUITY FUND”

SUBJECT : PURCHASE OF DIFFERENT TYPES OF ANNUITIES AT RETIREMENT

Preamble

For the purposes of this ruling –

- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **“retirement fund”** refers collectively to a “pension fund”, “pension preservation fund”, “provident fund”, “provident preservation fund” or “retirement annuity fund” as defined in section 1(1);
- **“section”** means a section of the Act, unless the context indicates otherwise;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“the Pension Funds Act”** means the Pension Funds Act 24 of 1956; and
- any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR confirms that, for income tax purposes, any annuity purchased or provided by any retirement fund must be compulsory, non-commutable, payable for and based on the lifetime of the retiring member.

This means that the annuity may not be transferred, assigned, reduced, hypothecated or attached by creditors as contemplated by the provisions to sections 37A and 37B of the Pension Funds Act.

2. Background

General Note 12, issued on 20 July 1995, confirmed that even though some approved pension, provident and retirement annuity funds were, in terms of the rules of those funds, terminating that retirement fund’s liability to pay an annuity, the retirement fund could not terminate its liability to pay an annuity. General Note 18 replaced General Note 12 with effect from 1 September 2008.

General Notes 18 and 18A were issued following discussions held with various representatives of the retirement fund industry. By virtue of an agreement, retirement funds were permitted to terminate their continued liability in respect of a retiring member once an annuity was purchased, subject to certain terms and conditions as laid out in General Notes 18 and 18A. Both General Notes 18 and 18A were withdrawn on 26 February 2021.

This BGR is now issued to provide clarity after the withdrawal of General Notes 18 and 18A.

3. Discussion

The proviso to the definitions of retirement fund permits the Commissioner to prescribe additional limitations and conditions for the approval of rules of retirement funds. This discretion may be exercised whenever the Commissioner deems it necessary. General Notes 18 and 18A were issued in terms of this discretion of the Commissioner.

Any annuity so purchased in the name of the retiring member, in the name of the retirement fund or paid directly by such a retirement fund, must be compulsory, non-commutable, payable for and based on the lifetime of the retiring member. The annuity may not be transferred, assigned, reduced, hypothecated or attached by creditors as contemplated by the provisions to sections 37A and 37B of the Pension Funds Act.

This is in line with Regulation 39 of the Pension Funds Act that requires trustees to have an annuity strategy for members.

It is, however, not something specifically governed by the Income Tax Act, but rather by the provisions in the Pension Funds Act, as stated above.

The definitions of **each type of** retirement fund state that up to one-third of the member's total retirement interest may be commuted for a single payment and the remainder must be paid in the form of an annuity (including a living annuity). These provisions to the Act do not prescribe whether the annuity must be provided by the retirement fund or purchased from an insurer nor does it prescribe the nature or characteristics of such an annuity.

Sections 37A and 37B of the Pension Funds Act state that no benefit, including an annuity purchased by the retirement fund from an insurer for a member may be transferred, assigned, reduced, hypothecated or attached by creditors. It should, however, be noted that there is no distinction between member-owned annuities and fund-owned annuities purchased when the member retires from the retirement fund.

4. Ruling

It is accepted that, as per the agreement and the practice generally prevailing at this point, the following practice still prevails and is in line with an exercise of the Commissioner's discretionary power. The rules of retirement funds may therefore provide for –

- the retirement fund paying the annuity directly;
- purchasing the annuity in the name of the retirement fund; and
- purchasing the annuity in the name of a retiring member.

It is further confirmed that no annuity provided on retirement may be transferred, assigned, reduced, hypothecated or attached by creditors and must be compulsory, non-commutable, payable for and based on the lifetime of the retiring member.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

5. Period for which this ruling is valid

This BGR will apply from date of issue of the final BGR, and will apply until it is withdrawn or the relevant legislation is amended.

Head: Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE