



General Notes - Second Schedule to the Income Tax Act, 1962

General Note 10

GENERAL SUBJECT: SOURCE OF INCOME

SPECIFIC ASPECT: SECTION 9(1)(g)(ii)

STATUS: OPINION

BACKGROUND: Some administrators of retirement funds are of the opinion that the provisions of section 9(1)(g)(ii) of the Income Tax Act apply in circumstances where a paid-up member of a pension or provident fund who has not been a South African resident for at least two years out of the last ten years claims his or her benefit which was accumulated and contributed to during the member's period of service in South Africa. It is argued that the member has not rendered services in South Africa for the last two years out of the last ten years after his or her benefits were made paid-up and that the benefits should, as a result, not be regarded to be from a source in South Africa, which results in the benefits being tax free.

OPINION: Section 9(1)(g)(ii) of the Income Tax Act provides that an amount shall be deemed to have accrued to any person from a source within the Republic if it has been received by or has accrued to or in favour of such person by virtue of any pension or annuity (including a lump sum benefit) "...if the services in respect of which that pension or annuity was granted were performed within the Republic for at least two years during

the ten years immediately preceding the date from which the pension or annuity first became due." A paid-up member in the circumstances described above will be receiving a pension or annuity for services performed in South Africa and will, therefore, be fully taxable on the pension or annuity in South Africa.

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No changes made