

GENERAL NOTE GN 16

Addendum C

GENERAL SUBJECT: RETIREMENT FROM EMPLOYMENT

SPECIFIC ASPECT: COMMUTATION OF SMALL ANNUITIES

STATUS: OPINION

PURPOSE: The purpose of this addendum is to replace the contents of General Note GN16 as well as Addenda A and B to GN16 with the contents of this Addendum.

BACKGROUND: The Taxation Laws Amendment Act, No 8 of 2007, the Taxation Laws Amendment Act, No 3 of 2008 and the Revenue Laws Amendment Act, No 60 of 2008 amended paragraphs (c)(ii)(dd); (e) and (b)(ii) of the definitions of "*pension fund*"; "*pension preservation fund*" and "*retirement annuity fund*" respectively, to provide as follows with regard to a pension fund:

"that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the employee is deceased;"

and as follows with regard to a pension preservation fund and retirement annuity fund:

"that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the member is deceased;"

OPINION:

The term "retirement interest"

The term "*retirement interest*" was introduced by the Taxation Laws Amendment Act, No 3 of 2008, with effect from 1 March 2008, and represents a member's share of the fund on the "*retirement date*" as determined in terms of the rules of the fund.

With regard to a defined contribution fund the member's share of the fund would be the amount in his or her member account on his or her "*retirement date*". With regard to a defined benefit fund the member's share would be the portion that is actuarially allocated to fund the member's benefit on his or her "*retirement date*".

In the case of death the "*retirement interest*" will typically be determined by reference to the risk benefits provided in terms of the rules of the fund.

In the case of a member of a retirement annuity fund in respect of whom multiple policies are held in the fund, the "*retirement interest*" of the member is the total value of all the policies on any particular "*retirement date*".

The term "retirement date"

The term "*retirement date*" was also introduced by the Taxation Laws Amendment Act, No 3 of 2008, and represents the date on which a member of a fund becomes entitled to the payment of an annuity or a lump sum benefit on retirement or death or subsequent to death.

As explained in General Note 11, the rules of the fund determine when a member becomes entitled to a benefit, subject to the conditions in the definitions of "normal retirement age" and "retirement date" introduced by the above-mentioned Act.

Retirement on or after 1 October 2007

A member of a pension fund or retirement annuity fund may commute up to a maximum of one-third of his or her "*retirement interest*" on retirement for a lump sum. In addition to the one-third commutation, a member may commute the remaining two-thirds of the total value of the "*retirement interest*" in that fund if the value of the remaining two-thirds does not exceed R50 000. Effectively, this means that a member whose total "*retirement interest*" in a fund on retirement is R75 000 or less will be able to commute the full amount for a lump sum. The rules of the fund must provide for the commutation of small annuities.

Existing annuities (prior and subsequent to 1 October 2007)

The opportunity to commute an annuity for a lump sum arises on retirement from the fund. However, where a retirement fund administrator, or a South African long-term insurer in the case of annuities purchased in the name of the member or former member (GN18-annuities), is satisfied that a member or former member who is in receipt of an annuity did not commute any portion of his or her "*retirement interest*" the member or former member may, subject to the terms and conditions of the annuity, commute the annuity for a lump sum on condition that the total value of the "*retirement interest*" did not exceed R75 000 on the "*retirement date*" of the member.

Where a member or former member commuted before, or where the retirement fund administrator is unable to determine whether such a commutation occurred, the annuitant may, subject to the terms of the annuity, commute the remaining annuity for a lump sum if two-thirds of the member's "*retirement interest*" on the "*retirement date*" of the member did not exceed R50 000.

Living annuities

This addendum does not apply to living annuities as defined in section 1 of the Income Tax Act, 1962.

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