SARS
South African Revenue Service

BINDING CLASS RULING: BCR 080

DATE: 12 August 2022

ACT	**:**	**INCOME TAX ACT 58 OF 1962 (the Act)** **ESTATE DUTY ACT 45 OF 1955 (Estate Duty Act)**
SECTION	**:**	**SECTIONS 1(1) – DEFINITIONS OF “GROSS INCOME”, “PENSION FUND”, “PROVIDENT FUND”, “RETIREMENT ANNUITY FUND” AND “TRUST”, 7(1), 9HA, 11F, 25B, 54, 55 – DEFINITIONS OF “DONATION” AND “PROPERTY”, 58 AND PARAGRAPHS 1 – DEFINITION OF “ASSET”, 20(1), 35(1), 54, 80 AND 81 OF THE EIGHTH SCHEDULE TO THE ACT** **SECTION 3 OF THE ESTATE DUTY ACT**
SUBJECT	**:**	**TAX IMPLICATIONS FOR RESIDENT BENEFICIARIES OF A FOREIGN PENSION TRUST**

Preamble

This binding class ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and the class members only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the income tax, capital gains tax and estate duty implications for resident beneficiaries of a foreign pension trust.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the relevant Act and paragraphs of the Eighth Schedule to the Act applicable as at 11 July 2022. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of –

- the Act –
  - section 1(1) – definitions of “gross income”, “pension fund”, “provident fund”, “retirement annuity fund” and “trust”;
  - section 7(1);
  - section 9HA;
  - section 11F;
  - section 25B;
  - section 54;
  - section 55 – definitions of “donation” and “property”;

- section 58;
- paragraph 1 – definition of “asset”;
- paragraph 20(1);
- paragraph 35(1);
- paragraph 54;
- paragraph 80; and
- paragraph 81.

- the Estate Duty Act –
  - section 3.

3. Class

The class members to whom this ruling will apply are the resident investors who will become beneficiaries of the foreign pension trust (FPT).

4. Parties to the proposed transaction

The applicant:	A resident company
The class:	Resident investors who will make contributions to and become beneficiaries of the FPT

5. Description of the proposed transaction

The applicant is the founder of the FPT. The FPT is a non-resident pension scheme established under trust and constituted by way of trust deed. The FPT has scheme rules. Its proper law is not South African (SA).

The FPT was established in a foreign jurisdiction where its beneficiaries are potentially exempt from income tax on any annuities or lump sums paid pursuant to its pension scheme, provided that the individual to whom the annuity or lump sum is payable is not resident for income tax purposes in that jurisdiction.

The applicant intends to offer a financial product which will be housed in the FPT which is intended to be a pension scheme which will offer SA resident investors access to offshore hard currency retirement investment options with estate and succession planning benefits.

The applicant proposes that the scheme will operate as follows:

a) An SA resident person (Investor) will make a contribution of cash or assets to the FPT. The contribution may be once-off or on an *ad hoc* basis.

b) The Investor will make the contribution with the expectation of becoming a beneficiary/member of the FPT and receiving certain retirement benefits such as lump sums and/or annuities from the FPT, subject to the trustees of the FPT exercising their discretion in accordance with the scheme rules.

c) The Investor will serve as a single member to the offshore retirement arrangement.

d) Each Investor's retirement benefits will be determined with reference to the Investor's contribution.

e) An Investor will be eligible to receive retirement benefits upon reaching the 'normal retirement date'.

f) Prior to the normal retirement date, an Investor will be eligible to receive –

   i) 'discretionary distributions' of income or capital in the event of incapacity; and

   ii) retirement benefits from the age of fifty years, subject to approval from the trustees of the FPT.

g) The retirement benefits will be funded firstly from the capital contributed by the Investor to the FPT, the growth on that contribution, and then from any income earned because of the contribution. Any income earned prior to the Investor reaching the normal retirement date will, according to the applicant, vest in the Investor on the exercise of the trustees' discretion only and will be subject to the scheme rules.

h) If an Investor dies prior to reaching the normal retirement date, the designated dependants of the deceased may become beneficiaries of the FPT. These beneficiaries may receive annuity payments or lump sum payments from the FPT subject to the trustees exercising their discretion in terms of the scheme rules.

i) The FPT will not become obsolete if an Investor changes his or her country of tax residence.

j) The applicant states that Investors will not have beneficial control of the contributions made to the FPT and any growth thereon.

k) The FPT will provide protection from creditors and will not form part of the Investor's personal assets.

l) The contributions and growth thereon will not at any time be encumbered by existing or potential liabilities of other Investor's.

m) With respect to investment choices, most assets will be allowed including cash, quoted and unquoted shares, fixed interest securities, commercial and residential property, offshore insurance bonds and discretionary active managed or passive strategies.

n) There will be no requirement for an Investor to purchase an annuity and there will be no prescribed drawdown limit.

o) Investors may take a loan of up to 50% of the fund value before normal retirement date.

p) With respect to beneficiary nominations, an Investor's assets may be passed to any nominated beneficiary or into a trust on the death of an Investor. Assets will not go through probate.

6. Conditions and assumptions

This binding class ruling is not subject to any additional conditions and assumptions.

7. Ruling

The ruling made in connection with the proposed transaction is as follows:

a) The FPT is not a “pension fund”, “provident fund” or “retirement annuity fund” as defined in section 1(1).

b) Section 11F will not apply in respect of contributions made by Investors to the FPT.

c) A contribution made by an Investor will not constitute a “donation” as defined in section 55. Sections 54 and 58(1) will not apply to Investors in respect of contributions made to the FPT.

d) An Investor will, upon becoming a beneficiary/member of the FPT, acquire a personal right against the trustees of the FPT to administer the trust appropriately, and a vested personal right to the income and capital of the FPT, subject to the time-based restrictions stipulated in the scheme rules.

e) An Investor’s personal right to the income and capital of the FPT will have a base cost in accordance with paragraph 20(1) of the Eighth Schedule equal to the contribution made by the Investor. Paragraph 81 of the Eighth Schedule will not apply in respect of the personal right of an Investor mentioned in this paragraph as the right is not a contingent right but a vested right.

f) Section 7(1) will apply to the Investors of the FPT.

g) When an Investor dies prior to normal retirement date, the vested personal right will constitute “property” in terms of section 3 of the Estate Duty Act. The right will form part of the deceased Investor’s dutiable estate.

h) When an Investor dies prior to normal retirement date, he or she will be deemed to have disposed of his or her vested personal right before his or her death for market value in terms of section 9HA(1). Where the requirements of paragraph 54(*b*) of the Eighth Schedule are not satisfied, the market value of the right will be treated as proceeds for purposes of paragraph 35(1) of the Eighth Schedule.

i) When an Investor reaches normal retirement date as stipulated in the scheme rules, any annuity paid by the FPT to the Investor will constitute an annuity for purposes of the Act which must be included in the gross income of the Investor in terms of paragraph (*a*) of the definition of “gross income” in section 1(1).

j) On the death of an Investor after normal retirement date, the right to an annuity will constitute “property” as defined in paragraph (*b*) of the definition of “property” in section 3 of the Estate Duty Act. The right to an annuity will fall within the dutiable estate of the deceased Investor.

k) On the death of an Investor after normal retirement date, the Investor will be deemed to have disposed of the right to an annuity for market value in terms of section 9HA(1). The Investor will also be deemed to have disposed of his or her right to lump sum benefits for market value where the requirements of paragraph 54(*b*) of the Eighth Schedule are not satisfied.

l) No ruling is made on the application of section 25B of the Act and paragraph 80 of the Eighth Schedule to the Investors.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five years from 11 July 2022.

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