

BINDING GENERAL RULING (INCOME TAX) 25 (Issue 2)

DATE: 16 March 2017

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 10(1)(gC)(ii)
SUBJECT : EXEMPTION – FOREIGN PENSIONS

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;
- **“Republic”** means “Republic” as defined in section 1(1);
- **“resident”** means “resident” as defined in section 1(1);
- **“section”** means a section of the Act;
- **“the Act”** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR provides clarity on the interpretation and application of the words “from a source outside the Republic” in section 10(1)(gC)(ii) in relation to pension payments that are received by or accrue to a resident.

2. Background

Section 10(1)(gC)(ii) exempts from normal tax any pension received by or accrued to a resident from a source outside the Republic as consideration for past employment outside the Republic.

The term “source outside the Republic” can be interpreted to mean either the originating cause¹ which gave rise to that pension (foreign services rendered), or the location from which the pension is received (namely, where the fund is situated).

The term “past employment outside the Republic” refers to services rendered outside the Republic. Only the portion of a pension that relates to services rendered outside the Republic is exempt from income tax.

3. Ruling

The term “source outside the Republic”, for purposes of section 10(1)(gC)(ii), refers to the originating cause which gives rise to the pension income, namely, where the services have been rendered.

¹ As established in *CIR v Lever Bros and Unilever Ltd* 1946 AD 441, 14 SATC 1.

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

4. Application

The following formula is used to calculate the portion of a pension that will be exempt due to services rendered outside the Republic:

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

5. Exclusion

Section 10(1)(gC)(ii) has been amended and, with effect from 1 March 2017, the exemption will no longer apply to any lump sum, pension or annuity paid or payable by a “pension fund”, “provident fund”, “pension preservation fund”, “provident preservation fund” or “retirement annuity fund” as defined in section 1(1) (irrespective of where the services were rendered) other than to amounts transferred to such fund from a source outside the Republic.

6. Period for which this ruling is valid

This BGR applies from date of issue until 4 October 2018.

**Executive: Legal Advisory
Legal Counsel
SOUTH AFRICAN REVENUE SERVICE**