

BINDING PRIVATE RULING: BPR 355

DATE: 25 November 2020

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME” AND 10(1)(gC)(ii)
SUBJECT : ACCRUAL OF PENSION PAYMENTS TO A RESIDENT FROM A FOREIGN PENSION FUND

Preamble

This binding private 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 any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences of the accrual of pension payments to a resident from a foreign pension fund in respect of services rendered both in South Africa (SA) and outside SA.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 22 October 2020. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 1(1) – definition of “gross income” and
- section 10(1)(gC)(ii).

3. Parties to the proposed transaction

The applicant:	A resident individual but a citizen of country X
Company A:	A company resident in country X
The Fund:	A pension fund resident in country X
Company B:	A resident company to which the applicant was seconded whilst employed by Company A

4. Description of the proposed transaction

The applicant was employed in country X for 15 years by Company A prior to taking up employment and residence in SA. The applicant rendered services solely to Company A for the first 12 years of his employment. From year 13 to 15 he was seconded to Company B in SA whilst employed by Company A.

The applicant's secondment and his employment with Company A came to an end at the conclusion of year 15 and he became permanently employed by Company B. He also became ordinarily resident in SA after year 15.

Company A made pension contributions in respect of the applicant to the Fund for the first 12 years for services rendered.

Company B made pension contributions in respect of the applicant to the Fund from year 13 to 15 during his secondment period for services rendered.

The applicant made no contributions to the Fund as it was a non-contributory fund.

The applicant has reached the retirement age as stipulated by the rules of the Fund, but pension payments have not yet accrued to or been paid to him because he has not yet made an election to receive the pension payments.

The applicant proposes to make the necessary notification to the Fund in order to commence receiving the pension payments from the Fund.

The proposed transaction is the accrual of pension payments from the Fund as they fall due.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the applicant is ordinarily resident in SA and not deemed to be exclusively a resident of country X or another country for purposes of the application of any Convention between the Government of SA and that of another country for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains.

6. Ruling

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

- a) The pension amounts that will accrue to the applicant from the Fund must be included in the applicant's gross income subject to the exemption under section 10(1)(gC) applying proportionally.
- b) The portion of each pension amount that will accrue from the Fund that is in respect of past employment services rendered outside of SA will be exempt from normal tax under section 10(1)(gC).

The formula to determine the exempt amount is:

$$\frac{\text{Period of services rendered outside the Republic}}{\text{Total period during which services were rendered}} \times \text{Amount of lump sum or pension received or accrued} = \text{Amount exempt under section 10(1)(gC)}$$

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 22 October 2020.

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