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Submission File

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South African Revenue Service
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BY E-MAIL: policycomments@sars.gov.za

Dear SARS

COMMENTS ON THE DRAFT BINDING GENERAL RULING – PURCHASE OF DIFFERENT TYPES OF ANNUITIES AT RETIREMENT

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) on the draft Binding General Ruling (BGR) confirming that, for income tax purposes, any annuity purchased or provided by any retirement fund must be compulsory, non-commutable, payable for and based on the lifetime of the retiring member. It further confirms that annuities may not be transferred, assigned, reduced, hypothecated or attached by creditors as contemplated by the provisions to sections 37A and 37B of the Pension Funds Act.
2. We set out below our comments in this regard.

COMMENTS

Section 1: Purpose

3. The first paragraph in this section states that the BGR confirms that, for income tax purposes, any annuity purchased or provided by any retirement fund must be compulsory, non-commutable, payable for and based on the lifetime of the retiring member.
4. The definition of 'living annuity' in section 1 of the Income Tax Act, refers to *an annuity* provided by the fund or purchased by the fund. It would appear that 'any annuity' includes reference to a living annuity, but confirmation of this would be preferable.
5. Submission: The term 'any annuity' should be qualified or reference to a living annuity should also be made in this paragraph.
6. The reference to 'on the lifetime of the retiring member' in the first paragraph appears to relate to defined benefit funds, but this does not seem to recognise that for other defined contribution funds it is the value of the retirement interest that will determine the annuity and not the life of the person, that is, the annuity can be taken out over the life of the



member, but this is limited to the funds contributed and available to the member. The living annuity, with reference to the life of the member, thus does not have a guarantee

7. Submission: Consideration should be given in the draft BGR to defined contribution funds where the payment of annuities to a member is limited to the value of the contributions made irrespective of the lifetime of the retiring member.

8. The second sentence in this section states the following: "*This means that the annuity may not be transferred, assigned, reduced, hypothecated or attached by creditors as contemplated by the provisions to sections 37A and 37B of the Pension Funds Act.*"

9. The above sentence follows from the previous one, but it is not clear how the second sentence provides clarity of the meaning of the first sentence – it adds a further requirement.

10. Submission: We suggest that the '*This means*' must be removed from the beginning of the sentence and that the sentence be reworded to convey that in terms of the Pension Funds Act, these annuities are excluded from the annuitant's assets and can't be used as security.

Section 3: Discussion

11. The fourth paragraph of this section deals with the definitions of each type of retirement fund and their requirement to pay out a single payment (lumpsum) and an annuity (including a living annuity). The last sentence in this paragraph reads as follows: '*These provisions to the Act do not prescribe whether the annuity must be provided by the retirement fund or purchased from an insurer nor does it prescribe the nature or characteristics of such an annuity.*'

12. Although it is true that the definitions of the three funds don't specifically deal with the option of the annuity being provided by the retirement fund or being purchased from an insurer, the definitions of these funds refer to a 'living annuity' in relation to the payment of one third of the member's fund value in the form of a lumpsum and two thirds in the form of annuities (including a living annuity).

13. Submission: The definition of a 'living annuity' contained in the definitions of the different funds should be taken into consideration and this paragraph should be reworded to provide for the inclusion of living annuities in the definitions of the different funds.

Section 4: Ruling

14. General Note 18 stated that a member of a fund may select only one of the options listed on page 2 of the draft BGR (the retirement fund paying the annuity directly; purchasing the annuity in the name of the retirement fund; and purchasing the annuity in the name of a retiring member) and not a combination thereof. Thus, members were limited to one of these options. The current draft BGR does not include this and this aligns with the proposed changes incorporated in the 2021 Taxation Laws Amendment Bill.



15. Submission: We suggest adding the words “or any combination of the above” after the third bullet point in this paragraph setting out the three different ways the retirement fund rules may provide for the provision of annuities to retiring members. This will also making it clear that members are not prohibited from utilising the retirement interest to acquire various annuities as will be clarified in the legislation once the Taxation Laws Amendment Bill has been promulgated.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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The South African Institute of Chartered Accountants