SARS South African Revenue Service

GENERAL NOTE GN 16

Issue 2

GENERAL SUBJECT: **RETIREMENT**

SPECIFIC ASPECT: **COMMUTATION OF SMALL ANNUITIES**

STATUS: **OPINION**

PURPOSE: This Note replaces the contents of the original GN16 and all its addenda.

It confirms that not more than one-third of a member's interest in the fund may be commuted for a single payment unless the full benefit that a member of a pension fund, pension preservation fund or retirement annuity fund becomes entitled to in that fund does not exceed R75 000 in which even the total retirement interest may be commuted.

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 and a pension preservation 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 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.

In 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". In 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 with 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 or a pension preservation fund in respect of whom multiple policies or contracts are held in the fund, the "retirement interest" of the member is the total value of all the policies under the fund 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 that Act.

Retirement on or after 1 October 2007

A member of a pension fund, pension preservation fund or retirement annuity fund may commute up to a maximum of one-third of his or her "retirement interest" on retirement for a single payment. 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 does not exceed R75 000 is able to commute the full amount for a lump sum. The rules of the fund must provide for the commutation of small annuities.

In circumstances where there are multiple retirement dates under one fund and the retirement interests under all the policies exceed R75 000, an aggregation of current retirement interests with past retirement interests in the fund occurs.

In view of the aggregation in a particular fund the sum of the values of all the policies or contracts in that fund must be calculated to determine whether or not the amount of R75 000 will be exceeded.

Existing annuities (before and after 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.

Issued by the
Legal and Policy Division
South African Revenue Service
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