

ADDENDUM A TO GENERAL NOTE 29

GENERAL SUBJECT: SECOND SCHEDULE TO THE INCOME TAX ACT, No 58 of 1962 (the Act)

SPECIFIC ASPECT: APPORTIONMENT OF SURPLUS AND MINIMUM BENEFIT REQUIREMENTS

STATUS: DECISION

BACKGROUND: General Note GN29 considers the taxability of surplus distributions made in terms of section 15B of the Pension Funds Act, 1956 (No. 24 of 1956), as amended. Section 49(1) of the Taxation Laws Amendment Act, 2007 (No. 8 of 2007) inserted paragraph 2C of the Second Schedule to the Act to exclude certain surplus distributions from income tax.

DECISION: **Qualifying surplus distributions**

In terms of paragraph 2C of the Second Schedule to the Act –

- any lump sum benefit,
- that is received or accrued subsequent to a member or former member's retirement, death, withdrawal or resignation or to the winding-up of a fund, and
- in consequence of the approval of a scheme in terms of section 15B of the Pension Funds Act, 1956,

qualifies to be excluded from “gross income” as defined in section 1 of the Act and is, in these circumstances, not subject to income tax.

Non-qualifying distributions

The income tax dispensation in relation to a surplus distribution that does not qualify to be excluded from income tax under the provisions of paragraph 2C of the Second Schedule remains unchanged. Examples of non-qualifying surplus distributions include:

- Distributions to the fund account of active members. To qualify, a lump sum benefit must have been received by or accrued to a person *subsequent* to retirement, death, withdrawal or resignation or to the winding-up of a fund, which is not the case.
- Distributions to the employee or employer surplus account. To qualify, a lump sum benefit must have been received by or accrued to a person *subsequent* to retirement, death, withdrawal or resignation or to the winding-up of a fund, which is not the case.
- Distributions that enhances an existing pension of a member or former member. To qualify, a *lump sum benefit* must have been *received by or accrued* to a person, which is not the case.

Effective date

The effective date of the amendment is 1 January 2006, which means that a qualifying

surplus distribution on or after 1 January 2006 is excluded from income tax.

Applications for tax directives in the case of qualifying surplus distributions

There is no liability under the provisions of the Fourth Schedule to the Act on a fund administrator to apply for a tax directive in respect of a qualifying surplus distribution.

General

- Whether or not a distribution is a qualifying distribution, and in particular whether the distribution is made to a person *subsequent* to a member or former member's retirement, death, withdrawal or resignation or to the winding-up of a fund is determined by SARS by reference to the date on which the Financial Services Board approved the surplus distribution scheme.
- Where employees' tax has already been deducted in terms of a directive issued by SARS a correction and, where appropriate, a refund will be made to the taxpayer on assessment.

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