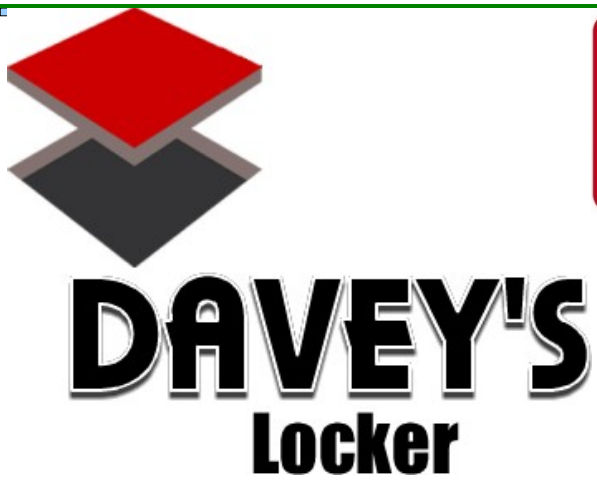

Davey's Locker

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Pensions & foreign service

Residents getting a raw deal?

by Tony Davey

If, as a resident, you receive a pension from a foreign source (the pension fund concerned is registered and administered offshore) in consideration for offshore services, courtesy of s 10(1)(*g*C)(ii) of the Income Tax Act, the pension will be exempt from tax.

Resident persons who rendered services abroad but belong to a locally registered pension fund do not fall within this exemption, and historically relied on s 9(1)(*g*)(ii) (now s 9(2)(*i*) with effect from 1 January 2012) to claim an apportioned exemption of the pension benefits, based upon the time spent working abroad relative to that spent working locally.

Historically, SARS gave annual directives to pension fund administrators exempting the foreign-service element, but this dispensation has now changed, and the SARS view is that the s 9(2)(*i*) apportionment applies only to nonresidents who rendered partial services in SA.

The irony of this approach is that an SA resident may render services abroad and, provided he meets the requirements of s 10(1)(*o*)(ii) (183 days abroad per twelve-month month period, of which sixty days is continuous), the resulting foreign earnings are exempt. Such exempt services are the *raison d'être* of the subsequent pension, yet this, in SARS's view, is not exempt.

I have considered the arguments over s 9(2)(*i*), both for and against the exemption. Suffice it to note that, depending on whether one takes a golden rule (literal interpretation) of s 9 or an Income Tax Act structural approach (an exemption can exist only under s 10 and not under s 9, which is a deemed-source provision) a different result ensues.
It may be time for a test case in the tax court.