TAXATION OF PENSION BENEFITS

IN TANZANIA

By P.J. Luoga

ABSTRACT

It is clear that taxing pensions is not a popular arrangement. All pensioners would be very happy if the Government allowed payment of pensions free of tax. This paper explores the current scope of charging tax on pensions and explains the treatment of contributions and premiums payable to pension funds and insurance policies respectively. It is also pointed out that there is a need for exempting pensions from income tax. We also make suggestions on changing certain provisions of the Income Tax Act 1973 which deal with pension matters.

1. INTRODUCTION:

Paragraph (c) of subsection 2 of section 3 of the Income Tax Act 1973 (hereinafter referred to as the Act) as amended in 1992 states:-

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"Any pension or amount received under a pension scheme or a pension fund other than any pension payable to an employee who has retired from the service of the Government or a parastatal organization, any annuity or a trust scheme which is approved or established by or under any written law".

is income chargeable to tax subject to the other provisions of the Act.

On the basis of strict interpretation of the law the above quoted passage gives rise to the following conclusions:-

(i) Pensions or other sums which are to be subjected to income tax must originate from pension schemes or funds, annuity or trust schemes which have been approved by the Commissioner for Income Tax, or have been established under written laws. If such amounts are paid out of unapproved schemes or funds which have not been established under any written law then they are to be treated as being free from income taxation.

(ii) Pensions or similar sums received by pensioners who had served the country in the public sector cannot be subjected to income tax.

While PPF is not an approved fund it is true that it has been established under section 4 of the Parastatal Pension Act 1978.[1] PPF members can therefore escape income tax on their pensions if they receive such sums due to

their services to the Government or parastatal organizations. Pensions received due to services to private organizations are taxable as section 3(2) (c) of the Act does not exclude such amounts from income tax.

The aim of this paper is to discuss issues related to taxation of pensions. As such sums can be paid out of schemes or funds which have or have not been approved and from schemes or funds established under written laws, the discussion will incorporate all these possible sources of pensions. In Part 2 we discuss the general scope of liability to tax for resident and non-resident pensioners. Tax treatment of contributions by employers and employees is explained in Part 3 while Part 4 contains a discussion of computation of taxable pension benefits. We consider insurance and annuity reliefs in Part 5 and the possibility of exemptions in Part 6. Brief concluding remarks are given in Part 7.

2. SCOPE OF LIABILITY TO TAX

2.1. Resident Pensioners

The Finance Act 1992 deleted subsection (1) of section 8 of the Act and renumbered the remaining subsections of this section. The same Finance Act amended section 3(1) (a) of the Act which now reads as:-

> "In the case of resident person, upon all the income of such person which accrued worldwide......."

Following these changes, resident persons are now required to pay income tax on income accrued from any country thus giving effect to the concept of worldwide income base. Pensioners are not an exception and hence they have to pay income tax on the pension they receive from any part of the world. The place of rendering services and the location of the pension fund are immaterial when determining the scope of liability to income tax on pensions received by resident persons. This is the position from 1st July, 1992.[2]

2.2 **Non-Resident Pensioners**

Sub-section (2) of section 8 of the Act as renumbered states:-

> "For the purposes of this Act any pension or retirement annuity received by a non-resident individual from a pension fund or pension scheme established in the United Republic shall be deemed to have accrued in or to have been derived from the United Republic". Thus the essence of liability is not the residential status of the pensioner i.e. the payee, but the place where the pension scheme or pension fund is established or the place of execution of the annuity contract. The place where the services were rendered is also immaterial.

Illustrations:

(i) Mr. Juma a local Tanzanian was serving as a clerk in the Empire Theatre Limited since 01/01//1965 and retired as a Manager from the service of this Company on 31/12/1992. His normal pension entitlement was fixed at shs.226,000/= p.a. After retirement on 21/12/1992 he permanently emigrated to Kampala. The pension fund of the Empire Theatre Limited which is a resident Company is established in the United Republic. As such the whole of the pension of shs.226,000/= p.a. was deemed to be income accrued in or derived from the United Republic and therefore taxable.

(ii) Assume in the above example that the Empire Theatre Limited had another theatre in Kampala and assume that Mr. Juma was throughout the above period of service serving in the theatre at Kampala. In this case also the whole of the pension is deemed to be income accrued in or derived from the United Republic and as such taxable in the United Republic even though no part of the service was rendered by him in the United Republic.

(iii) Mr. William, as an American citizen was serving in American Electronics Limited from 01/01/1972 to 31/12/1991 and was throughout posted at a Branch Office of the Company in Washington. His terms of employment did not provide for any payment of pension. Since, however, the Company very much appreciated the services

rendered by him during his period of twenty years with the company it decided to give him or his legal heirs in the case of death before the end of ten years an annuity of shs.218,000/= for a period of ten years by purchasing an annuity contract with the National Insurance Corporation of Tanzania Ltd. Since the annuity contract is executed between the National Insurance Corporation of Tanzania Limited and American Electronics Ltd, the whole of this annuity is deemed to have accrued in or to have been derived from the United Republic. It is immaterial that Mr. William did not render any service in the United Republic, or that he did not himself enter into any annuity contract, or that he had always been a non-resident individual. It is enough if the annuity contract is executed and is enforceable in the United Republic.

The second special provision which is applicable to non-resident pensioners is contained in paragraph (b) of subsection (2) of section 8 of the Act.[3]. It provides that any pension received in respect of employment by or services rendered to the East African Community or a Corporation of the Community shall be deemed to have accrued in or derived from the United Republic if paid by a resident person. The residential status of the person paying the pension is important. The place at which the services were rendered by the pensioner is immaterial. It is enough if the pension is attributable to services rendered to the former East African

Community or any of its Corporations and the person who pays is a resident person.

3. TREATMENT OF CONTRIBUTIONS:

3.1 By Employers

Following the Commissioner's approval, employers' contributions to an approved pension fund as determined under section 25 of the Act are treated as allowable expenses in ascertaining the employers' taxable income. This is by virtue of paragraph (c) or subsection (2) of section 16 of the Act.[4]

On the other hand, employers' contributions to an unapproved pension fund are treated as unallowable expenses as the same have been prohibited from being deductible by paragraph (d) of subsection (2) of subsection (2) of section 17 of the Act.

Subsection (2) of section 16 of the Act which deals with allowable (deductible) expenses states in paragraph (n):-

> "any sum contributed in such year of income by an employer to a national provident fund or other retirement benefits scheme established for employees in the United Republic by the provisions of any written law".

Such contributions therefore, include those which are made by employers under the Parastatal Pension Scheme which has been established under section 4 of the Parastatal Pension Act, 1978.

Employers' contributions or premiums paid for the benefit of employees to an approved pension scheme or fund are not taxable in the hands of employees by virtue of paragraph (f) of subsection (2) of section 5 of the Act subject to paragraph (c) of subsection (4) of section 5 of the Act. employers' contributions on behalf of employees to unapproved pension schemes or funds are taxable as employees' income.

In practice however, employers' contributions to any pension scheme or fund are not assessable in the hands of employees.

3.2 **By Employees**

Employees' contributions in most cases depend on the employees' income. Calculation of the quantum of an employee's monthly contribution is normally based on the monthly salary of the employee. Subsection (1) of section 8 of the Parastatal Pension Act 1978 for example states interalia the following:-

> "Each member shall, make as from the date of becoming a member, a contribution to the fund at the rate of five percentum of his salary and such contribution shall be deducted from his salary monthly"

Contributions made by an employee to any scheme or fund which has or has not been approved cannot be treated as allowable expenses in computing the employee's taxable income as such contributions constitute an application (use) of his income. Moreover.

allowing such contributions has been especially prohibited by paragraph (d) of subsection (2) of section 17 of the Act. Employees contribute out of their salaries after paying income tax.

Employees' contributions to approved pension or provident funds entitle them to personal tax relief known as insurance reliefs. The insurance relief was introduced by section 32E which was added by the Finance Act 1986 with effect from 1/7/86. Originally the relief was 5% of monthly salary or shs.400/= whichever was the lesser amount. The relief now after the 1990 changes which were effective from 1/7/1990 takes into account monthly premiums which must be compared to 5% of monthly or shs.400/=. The lesser amount is considered as an insurance relief in the case of employees. In the case of other persons the amount of the relief is the lesser of monthly premiums and four hundred shillings.

4. COMPUTATION OF TAXABLE PENSION BENEFITS

4.1 Meaning of Pension and Pension Entitlement

The term 'pension' has not been defined in the Act. We have therefore to refer to the common and ordinary meaning of this term. With this in mind, we can define the term 'pension' as a periodic or annual allowance made to a person usually in consideration of past employment services.

Pension may be paid by the Government for political, naval and military, police, civil and other services. The Parastatal Pension Act. 1978 (Act no 14

of 1978) which came into force from 01/7/78 has made it compulsory for parastatal organisations to pay pensions.

Other employers (other than the Government and parastatal organisations i.e. private organisations) also pay pensions out of pension schemes or funds established by such employers. Such schemes or funds might have been approved by the Commissioner of Income Tax in accordance with the provisions of section 23 of the Act or not so approved.

A "pensioner" may be defined as an individual who is supported by an allowance from another person or an individual who receives a sum of money without actually filling in an office under such past employer. From this definition (especially the second part) it should be clear that pension payments cannot be made by an employer unless there was some employment income paid by such employer or his predecessor(s).

"Pension entitlement" may be defined as a right of the employee to receive a fixed sum of money annually after his retirement from service or after leaving service. The sum may be payable only once, annually or monthly or in any other manner. The terms of the contract of employment will be the basis of deciding on the quantum of the pension entitlement and the period for which it is payable.

4.2 Commutation of Pension:

Commutation" can briefly be defined as a conversion of the right to receive a variable or periodical payment into the right to receive a fixed gross payment.

In certain cases, the employee may voluntarily request the employer to pay a lump sum of money. In turn, the employee voluntarily surrenders his right to receive either the full or part of his normal pension entitlement. This is commutation of pension. The lumpsum paid by the employer under such an agreement is called a commuted pension. It is paid only once and therefore it is not recurring. Under such an arrangement, the ex-employer, cannot force the ex-employee to commute the full or part of his normal pension entitlement and the ex-employee is not bound to commute the full or part of his normal pension entitlement. But as soon as the employer and the employee have agreed on the commuted pension, like any other contract it becomes a legal contract enforceable at law.

4.3 Liability to Tax of Normal and Commuted Pension:

Normal pension is fully taxable on the earnings basis. According to section 8(3) the first twenty four thousand shillings of retirement annuities in any year of income are taxed at half-normal rates if received by resident persons. Full rates must be applied if the recipient is a non-resident.

Section 84 of the Act deals with commuted pension.5 The subsection as amended reads as follows:-

"any commuted pension anticipated by surrender of future pension rights or any amount received under a pension scheme, a pension fund, an annuity contract or a trust scheme, which is approved or established by or under any written law, shall for the purposes of this Act be deemed to be income for the year in which it is paid".

"Provided that where any employee exercises the option of receiving commuted pension by surrendering not more than one-half of his total pension entitlement such commuted pension shall be deemed not to be income for the purposes of this Act".

The main part of sub-section (4) thus specifies the year of income in which the amount of commuted pension or any other amount received under a pension scheme, fund, annuity contract or a trust scheme which has been approved or established under any written law should be assessed. Such amounts must be chargeable to tax in the year of income in which they are paid. It is therefore the year of income in which payments are made which determines the year of income in which they are to be subjected to income tax.

The proviso to subsection (4) is negatively worded. In other words, if the employee decides to receive commuted pension by surrendering more than one-half (or 50%) of his total pension entitlement, then the amount representing the commuted pension will

be deemed to be income for the purposes of the Act and therefore taxable.

Alternatively, if the employee decides to receive commuted pension by surrendering one-half (50%) or less then one-half of his total pension entitlement, then the amount representing the commuted pension will not be income for the purposes of the Act and therefore exempt from Income Tax. The effect of the proviso before the 1984 amendments which were effective from 15.06 1984 was that, based on strict interpretation, if the employee crossed the maximum limit of commuting his total pension entitlement, (i.e. exceeding one-half), then no part of the commuted pension was treated as exempt from income tax as the whole of the commuted pension received was treated as taxable income.

Commuted pension was therefore either fully taxable or fully exempt and there was no other medium between these two alternatives. The Finance Act 1984, however, added paragraph 9A to the First Schedule to the Act which reads as:-

> "half of the gratuity or commuted pensions gratuity payable to any resident individual".

Thus, if the pensioner is an individual who is also resident in the United Republic, and such a resident individual pensioner decides to receive commuted pension by surrendering more than one-half of his total pension entitlement, then the whole amount of

the commuted pension so received will initially be treated as income under subsection 4 of section 8 of the Act. Finally, only one-half will be subjected to income tax by virtue of paragraph 9A of the First Schedule to the Act. The exemption does not apply to pensioners who are non-resident individuals. Moreover, the added paragraph 9A should not be applied to those cases or problems involving periods before 15.06.1994.

Illustrations: (Based on the law as it existed before the 1984 ammendments).

(i) Mr. Jamhuri a resident person was employed as an Administrative Manager of Zamdar Building Contractors Limited and his total (normal) pension entitlement was fixed at shs.100,000/= p.a. when he retired from the service of this employer after completing a service of 28 years and on attaining the age of fifty five years on 31/12/1981.

The terms of his service provided that he had to joined an unapproved pension scheme as all employees were entitled to commute sixty percent of their total pension entitlement. The pension fund could not be approved by the Commissioner for Income Tax as the regulations relating to the fund violated the provisions of sub-paragraph (iii) of

paragraph (d) of subsection (2) of section 23 of the Act.

On 01/01/1982 Mr. Jamhuri exercised his right to commute sixty percent of the total pension entitlement amounting to shs.60,000/- per annum. He was paid a sum of shs.622,800/= by way of commuted pension. Since he commuted sixty percent of his total pension entitlement, which is more than fifty percent (more than one-half of the total entitlement) the whole sum of shs.622,800/= was taxable along with the balance of the normal pension entitlement of shs.40,000/= plus any other taxable income in the year of income 1982. The Act does not provide for the spreading over of any amount of commuted pension, instead it states that, any pension must be chargeable to tax in the year of income in which it is paid. Therefore, the whole amount of sh.622,800/= was assessable in the year of income 1982 even if this appears to be harsh or unfair.

(ii) Assuming the same facts as in the above illustration No.1, but say Mr. Jamhuri though was actually entitled to commute sixty percent of the total pension

entitlement, he actually commuted forty percent of the total entitlement and received a sum of shs.380,600/= only by way of commuted pension on 01.01.82. In this case, even if the pension fund is assumed to be an unapproved one and although the contract of employment provided that Mr. Jamhuri could commute up to a maximum of sixty percent of his pension entitlement, the fact is that he commuted forty percent only of his pension entitlement. Thus, the whole amount of the commuted pension of shs.380,600/= should have been treated as totally exempt from income tax in the year of income 1982. It can be seen from this illustration that, the terms of the contract of employment and the actual amount of commuted pension are not relevant in deciding whether the amount is taxable or not.

(iii) Let us assume the same facts as in illustration NO. 1 above but that Mr. Jamhuri was entitled to commute fifty percent of the total pension entitlement which he commuted accordingly and received a commuted pension of shs.490,500/= on 01/01/1982. Here also, as the actual commutation of pension did not exceed one-half (fifty percent)

the whole of the commuted pension of shs.490,500/= should be fully exempt from income tax.

Illustration: (Based on the law after the 1984 amendments). Assume the same facts as those of illustration No.1 above. The pensioner commuted sixty percent of his total pension entitlement and received a sum of shs.622,800/=. On the basis of subsection (4) of section 8 of the Act, the sum of shs.622,800/= on 1/1/1990 should be treated as income of the year of income 1990. However, by virtue of paragraph 9A of the First Schedule to the Act, one-half of the sum i.e. shs.311,400/= is treated as exempt from income tax. The final effect was therefore to assess shs.311,400/= only in the hands of Mr. Jamhuri for the year of income 1990.

Had Mr. Jamhuri been a non-resident person, the exemption would not have been applied and the whole of shs.622,800/= would have been taxable in the year of income 1990. In those cases where pensioners (whether resident or non-resident) decide to commute 50% or less than 50% of their total pension entitlement, the position remains the same even after the 1984 amendments as the whole of the commuted pension must be treated as exempt from income tax.

5. INSURANCE AND ANNUITY RELIEFS:

5.1 The Original Position of Insurance Reliefs

The Finance Act 1986 introduced the following provisions with effect from 01/07/1986.

"32E -

(1) A resident individual who, in any year of income,

(a) Makes payments for Insurance on his life or that of his spouse or dependant child and such insurance secures a capital sum on death, whether or not in conjunction with any other benefit, and that insurance is made with an insurance company usually carrying on the business of life insurance in the United Republic.

(b) Has gains or profits in terms of section 5 (2) (f) or:

(c) Makes current contributions to any approved pension or provident fund, for that year of income, shall be entitled to a personal relief, in this Act referred to as an insurance relief.

(2) The provisions of subsection (1) of section 32 shall not apply to insurance relief.

(3) Nothing in this section shall be construed as providing for an insurance relief in respect of any premium paid under a policy of motor insurance.

The third Schedule to the Act was also amended to include the following passage:-

"The amount of the insurance relief shall be five percentum of a person's monthly salary or four hundred shillings, whichever is the lesser amount". The same Finance Act added paragraph (s) of subsection (2) of section 16 of the Act which contained the following passage:

"(s) such amount, not exceeding five percentum of a person's monthly salary, or four hundred shillings, whichever is the lesser amount, payable to an insurance corporation as monthly premium". The effect of these provisions was that if a resident individual was paying premiums towards his life assurance policy then he was entitled to both advantages under section 32E and section 16(2) (s) as insurance reliefs and allowable deductions respectively.

Let us consider an imaginary case involving Mr. Abdalla who was an employee with a monthly salary of shs.5,000/=. Assume that he was a resident person and making monthly payments, of shs.100/= to an Insurance Company for insurance on his life. When calculating his tax liability on

his salary, it would have been necessary first of all to apply section 16 (2) (s). The mentioned provision had an effect of reducing income to be subjected to income tax. It treated the amount so determined as an allowable deduction. The treatment would have been as shown below:-

Monthly gross salary:Shs.5,000/=
Less an allowable deduction
under section 16 (2) (s):
5% of shs.5,000/= = Shs.250/=.
Being less than Shs.400/= the
allowable deduction should have
been Shs.250/=............. Shs. **250/=**

Salary liable to income tax.Shs.4,750/=

Mr. Abdalla's monthly income tax liability should have been based on Shs. 4,750/=

Let us hypotheticaly assume that tax on Shs.4,750/= was Shs.X. This tax liability should have been further reduced by an insurance relief under section 32E. The relief should also have been the lesser amount between Shs.400/= and Shs.250/= that is Shs.250/=. The amount payable by Mr. Abdalla as income tax on his monthly salary would have been as under:

Gross monthly income tax liability shs. X
Less insurance relief under section 32E **250**
Net monthly income tax = Shs. X minus shs 250

It can be noted from the above that the

final effect of the provisions of sections 16 (2) (s) and 32E was that an individual resident person was having his income as well as tax liability reduced by virtue of having an insurance policy covering his life. In addition to this, the amount of the insurance relief to be deducted from his tax liability did not take into account the actual sums paid by him as monthly premiums. The only figures to be taken into account in determining the relief were 5% of the monthly salary and shs.400/=. The lesser of the two was the monthly insurance relief entitlement.

5.2 **The Present Situation:**

The Finance Act 1988 delected section 16 (2) (s) with effect from 01/07/1988. The effect was therefore to stop the practice of having (treating) as allowable deductions such sums as those mentioned above. The delection of this part of the law however did not affect what had been done prior to 01/07/1988. Possibly, the removal of this provision was based on the fact that it was unreasonable to grant both insurance reliefs and deductions to the same individual as a result of the same arrangement.

Thus, with effect from 10/07/1988 resident individuals with the assurance policies could be entitled to insurance reliefs only. The method of calculating the relief remained the same as was the case in 1986.

In June, 1989, the Government decided to make certain changes in calculating insurance reliefs. The law as it

exists now distinguishes resident individuals who are covered by section 32E (1) (a) and (b) from those who fall under section 32E (1) (c). The Finance Act 1989 which amended the Third Schedule to the Act introduced the following wording with effect from 01/07/1989.

> "The amount of the insurance relief shall be:
>
> (a) in the case to which section 32E (1) (a) or (b) applies, the monthly premium or four hundred shillings, whichever is the lesser amount; or
>
> (b) in the case to which section 32E (1) (c) applies, the monthly contribution or five percentum of a person's monthly salary or four hundred shillings whichever is the lesser amount":

In addition to the above change, the Finance Act 1989 also delected subsection (2) of section 32E with effect from 01/07/1989. The third schedule to the Act was further amended in 1990. The Finance Act 1990 retained the same wording for determination of insurance reliefs as reproduced above but added the following passage:

> "No person shall in respect of any year of income be entitled to claim insurance relief in respect of premiums or contributions for more than one life insurance policy or approved pension or provident fund".

This addition has now cleared doubts on whether or not resident persons who contribute towards two or more life assurance policies or approved funds are entitled to insurance reliefs for each of such policies of funds. It was observed that people were taking advantage of the original wording of section 32E which was silent on cases involving contributions to more than one policy or fund in order to reduce their tax liabilities.

5.3 **Annuity Reliefs:**

As noted earlier, the first twenty-four thousand shillings of retirement annuities in any year of income should be subjected to income tax at half of the normal rates. This is known as an annuity relief. The calculation of this relief involves the following steps:-

1. Determine the total amount of retirement annuities in the relevant year of income.

2. If the amount in No.1 above is shs.24,000 or less then the whole amount qualifies for annuity relief. If it is more than shs.24,000/= then only the first shs.24,000/= will qualify for the relief.

3. Let us assume that the amount which qualifies for annuity reliefs according to No.2 above is shs.24,000/=. The average monthly retirement annuity is therefore shs.2,000/=.

4. **Determine monthly income tax on shs.2,000/= per month at full rates. The annuity relief is one-half of the monthly tax on the retirement annuity for each month.**

Given current individual tax rates according to the Third Schedule to the Act, the monthly tax liability on shs.2,000/= is NIL. It is therefore impossible to calculate annuity reliefs. Although subsection (3) of section 8 of the Act authorizes such reliefs, it is impracticable to arrive at such sums. If the Government is serious with such reliefs, then it must increase the limit of shs.24,000/= per annum to an amount which takes into account the current threshhold for income tax purposes. It is also noted that while originally these reliefs were also available to pensions they now apply to cases involving retirement annuities only. The Finance Act 1992 deleted the phrases "total pension", or" "other than commuted pension" and "pension or from section 8(3) as renumbered with effect from 1st July 1992. The removal of such reliefs on normal pensions is considered to be unfair.

5.4 **General Remarks on Insurance Reliefs:**

It should be noted that the law as it is now does not allow insurance relief to employees who

contribute to the Parastatal Pension Fund (P.P.F.) and other similar funds which are not approved funds. The Parastatal Pension Fund and the National Provident Fund are not approved funds. These have been established by Acts of Parliament. The meaning of an approved fund has been given in section 2 (1) of the Act. Briefly, for a fund to be known as an approved fund, it is necessary to apply to the Commissioner to give his approval under section 23 (3) or 24 (3) after being satisfied with conditions stated in sections 23 (2) or 24 (2). It is obvious that there was not need of such approval when the Parastatal Pension Fund and the National Provident Fund were being established.

It has been observed that some employers grant insurance reliefs to their employees who contribute to the PPF. This is not correct and section 32E of the Act does not authorize this arrangement. The Government is therefore losing revenue by way of taxes. It has not been possible to quantify these amounts. If the Government intends to legalize this arrangement, then section 32E (1) must be amended and the PPF be explicitly mentioned therein.

6. RECOMMENDATIONS OF EXEMPTIONS OF PENSIONS ON

EQUITY GROUNDS

The main purpose of providing for pension payments is to ensure that retired citizens get financial support after their period of active service. The recipients of pension payments are of old age and some are sick or weak people. In most cases, amounts received as pensions are inadequate and not significant. By 1988 for example, only fourteen (14) pensioners who were members of the PPF were receiving pensions ranging between shs.1001/- and shs.2,000/= (Mattaka 1988). Given the rising cost of living and other prevailing social and economic conditions, such sums could hardly support the recipients. It is equitable that such amounts be exempted from income tax.

The wording of section 3(2) (c) of the Act makes it possible to exempt pensions received from unapproved funds which have not been established under any written law. It is a fact that employers' contributions towards these funds are not allowable deductions for income tax purposes. It is perhaps for this reason that benefits out of such funds cannot be subjected to income tax. Employers' contributions to the PPF and approved pension funds are treated as allowable deductions"

This however cannot be accepted as a reasonable ground for taxing pensions.

It is clear that employees do contribute from their salaries which have already been subjected to tax. It is very appropriate to exempt benefits which arise from such contributions [6]. According to section 5 (4) (d) of the Act, receipts from approved provident funds are not taxable. There is no explanation for taxing receipts from approved pension funds. In practice, receipts from the National Provident Fund are also not subjected to income tax. We have a feeling that receipts from the PPF should be given the same treatement.

The Government has now exempted from income tax pensions received by virtue of services to the Government and parastatal organizations. Members of the PPF will definitely benefit out of this arrangementif their employers are parastatal organisations. If this has been announced on equity grounds, then it is unequitable to subject to income tax pensioners whose employers are not Government institutions or parastatal organizations. The point here is that, it is not fair to penalize citizens of this country merely due to the fact that they had previously been serving their country in the private sector. In order to maintain consistency,

all pensions must be exempt from income tax irrespective of the sectors in which the recipients had been serving.

Paragraphs 7 and 8 of the First Schedule to the Act offer full exemption from income tax of income originating from approved pension schemes and funds. It has already been stated that the PPF is not an approved pension fund and therefore cannot take advantage of these exemptions. In terms of employers' contributions to approved pension funds and the PPF, the treatment is the same that they are allowable deductions under sections 16(2) (o) and 16 (2) (n) respectively.
It is not clear why the PPF should not be treated in the same manner when it comes to taxation of income. It is reasonable to recommend the inclusion of the PPF in the First Schedule to the Act and be exempted just like approved pension funds on uniformity of treatment and equity grounds.

7. **CONCLUSIONS:**

We have attempted a discussion of taxation of pension benefits by explaining the scope of liability of such sums and treatment of employers' and employees' contributions. We have also explained how taxable benefits, insurance and annuity reliefs have to be computed. It has been pointed out that it is not proper

to grant insurance reliefs to employees who contribute to the PPF without amending the Act. For reasons based on issues involving consistency, uniformity and equity considerations, we have argued that all types of pensions be exempted from income tax. In addition to all these we have also pointed out that the PPF should be treated in the same manner as approved pension schemes or funds and should enjoy the same advantages.

NOTES

1. Act No.14 of 1978.

2. For explanation on the position prior to 1st July, 1992 refer to "The ABC of the Income Tax Law" by J. Geho, and P. Luoga (1985) and "Taxation of Pension Benefits" by P. Luoga (1989).

3. This was originally section 8 (3) (b) of the Act. It is now section 8 (2) (b) after being renumbered with effect from 1/7/1992.

4. Details of approval of pension schemes or funds by the Commissioner for Income Tax are contained in section 23 of the Act.

5. Prior to 1/7/1992 this was section 8(5).

6. For more arguments on this issue refer to "Some Reflections on the Parastatal Pension Scheme, 1978, Benefits and Unresolved Issues at Stake" by W. Rugaika.

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