

**BINDING CLASS RULING: BCR 075**

DATE: 11 November 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTION 1(1) – PARAGRAPHS (c), (d), (e), (f) and (i) OF THE DEFINITION OF “GROSS INCOME” AND PARAGRAPH (a) READ WITH PARAGRAPH (c) OF THE DEFINITION OF “SEVERANCE BENEFIT”; SECTIONS 11(a) AND 11F; AND PARAGRAPH 1 – DEFINITION OF “REMUNERATION” IN THE FOURTH SCHEDULE; AND PARAGRAPH 2(l) OF THE SEVENTH SCHEDULE TO THE ACT**  
**SUBJECT : SETTLEMENT OF POST-RETIREMENT MEDICAL AID AND RETIREMENT GRATUITY BENEFITS**

***Preamble***

This binding class ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant, any co-applicant(s) and the class members only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines the tax consequences for the employers and the qualifying employees due to their relinquishment of post-retirement medical aid benefits and gratuity benefits.

**2. Relevant tax laws**

In this ruling references to sections are to sections of the Act applicable as at 3 August 2020. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 1(1) – paragraphs (c), (d), (e), (f) and (i) of the definition of “gross income”; and paragraph (a) of the definition of “severance benefit”;
- section 11(a) read with section 23(g);
- section 11F;
- paragraph 1 of the definition of “remuneration” in the Fourth Schedule; and
- paragraph 2(l) of the Seventh Schedule.

**3. Class**

The class members to whom this ruling will apply are the employers and the employees referred to in 4.

#### 4. **Parties to the proposed transaction**

The applicant:	A resident listed company
The employer companies:	The employers of the provident fund class members and the pension fund class members. The employers comprise the applicant and a subsidiary of the applicant, that is also a resident company
The provident fund class members:	Qualifying employees of the employer companies and members of a provident fund. Some are older than 55 years of age and others are not
The pension fund class members:	Qualifying employees of the employer companies and members of a pension fund. Some are older than 55 years of age and others are not

#### 5. **Description of the proposed transaction**

The employer companies concluded a Sale of Business Agreement with a purchaser, selling the assets (together with a concomitant assumption of the liabilities) of a part of the business (the business) of the group to which the employer companies belong. The implementation of the Sale of Business Agreement is subject to suspensive conditions.

The terms of the sale include that all employees of the business will be transferred to the purchaser in accordance with section 197 of the Labour Relations Act 66 of 1995 (the LRA).

The employer companies are participating employers in the group's pension fund (the pension fund) and provident fund (the provident fund), (collectively referred to as the retirement funds). The retirement savings of the transferring employees held in the retirement funds of the business will be transferred to appropriate retirement funds in which the purchaser is a participating employer. This transfer will take place in accordance with section 14 of the Pension Funds Act 24 of 1956 (the PFA).

The pension and provident fund class members are also currently entitled to post-retirement medical aid (PRMA) and retirement gratuity benefits (RGB), collectively referred to as "legacy benefits". The purchaser does not offer similar benefits to its employees and therefore it is envisaged that any rights to the legacy benefits will be extinguished if the suspensive conditions are fulfilled and the sale of business is implemented.

Separately, and pursuant to the sale of business agreement, the employer companies have made offers to the pension and provident fund class members prior to the conclusion of the sale of business.

In terms of the offer and in accordance with the rules of the pension fund, the full enhanced PRMA subsidy of the pension fund class members will be allocated to the pension fund class members' fund credits (retirement savings) in the pension fund (under section 15E(1)(d) of the PFA) on an equitable and on a "no-worse off"

basis and then transferred to the new fund of the purchaser subsequent to the sale of business being implemented. The pension fund class members will be entitled to elect that in respect of the full enhanced RGB, either –

- a portion of assets held in the pension fund Employer Surplus Account (ESA) must be allocated to the pension fund class members' fund credits in the pension fund (under section 15E(1)(d) of the PFA) on an equitable and on a "no-worse off" basis and then transferred to the new fund of the purchaser subsequent to the sale of business being implemented; or
- to have an amount paid out in cash (after the required tax has been deducted) by the employer companies to the pension fund class members; or
- to receive a portion of an amount (net of tax) paid in cash and for the balance to be allocated from the pension fund ESA to the pension fund class members' fund credits in the pension fund (under section 15E(1)(d) of the PFA) on an equitable and on a "no-worse off" basis and then for that balance to be transferred to the new fund of the purchaser subsequent to the sale of business being implemented.

In respect of the provident fund class members, the rules of the provident fund do not allow for an allocation of any ESA to member's retirement fund credits and therefore the provident fund class members will be entitled to elect one of the following –

- to receive an amount (net of tax) in cash;
- to have an amount (net of tax) paid into the provident fund, where it will be added to the member's fund credit and transferred along with the member's retirement savings to a retirement fund in which the purchaser is a participating employer;
- to receive a portion of the amount (net of tax) in cash and to have the balance (net of tax) paid into the provident fund for their benefit.

## **6. Conditions and assumptions**

This binding class ruling is made subject to the following additional conditions and assumptions:

- a) all the requirements of section 15 of the PFA must be adhered to; and
- b) the suspensive conditions set out in the sale of business agreement must be fulfilled.

## **7. Ruling**

The ruling made in connection with the proposed transaction is as follows:

- a) The cash payments to the provident fund class members under the age of 55 will –
  - i) constitute amounts received by or accrued to the provident fund class members, as contemplated in paragraph (d) of the definition of "gross income"; and

- ii) fall within the definition of “remuneration” in paragraph 1 of the Fourth Schedule, with the requisite amount of employees’ tax to be deducted by the employer companies.
- b) In relation to the PRMA subsidy, allocations from the pension fund ESA to the pension fund class members’ retirement savings accounts (member fund credits) will not –
  - i) constitute taxable fringe benefits under paragraph 2(l) of the Seventh Schedule and will, as a result, not have to be included under paragraph (i) of the definition of “gross income”;
  - ii) constitute amounts received by or accrued to the pension fund class members, as contemplated in paragraphs (c) and (f) of the definition of “gross income”; and
  - iii) be deductible by the pension fund class members in the determination of their taxable income under section 11F.
- c) Payments made by the employer companies directly to the provident fund class members in relation to the PRMA subsidy to members who are over the age of 55 at the time the payment is made, will constitute “severance benefits” as defined in section 1(1) and will be included in the gross income of the provident fund class members under paragraph (d) of the definition of “gross income”.
- d) Provident and pension fund class members who elect to receive all or part of the RGB in cash and who are over the age of 55 years at the time the election is made, will constitute “severance benefits” as defined in section 1(1) and will be included in the gross income of the provident and pension fund class members under paragraph (d) of the definition of “gross income”.
- e) Pension fund class members who elect for the full or part of their RGB to be allocated from the pension fund ESA to the pension fund class members’ retirement savings account, who are over the age of 55 years at the time the election is made will –
  - i) constitute “severance benefits” as defined in section 1(1) and will be included in the gross income of the pension fund class members under paragraph (d) of the definition of “gross income”;
  - ii) not constitute taxable fringe benefits under paragraph 2(l) of the Seventh Schedule and will, as a result, not have to be included under paragraph (j) of the definition of “gross income”; and
  - iii) be deductible by the pension fund class members in the determination of their taxable income under section 11F.
- f) Payments to pension fund class members from the pension fund, (or its successor fund in respect of which the purchaser is a participating employer), must be included in the gross income of those members under paragraph (e) of the definition of “gross income” and read with the Second Schedule as and when a pension fund class member becomes entitled thereto, whether due to death, retirement, resignation or dismissal; irrespective of payments being originated from normal contributions to the

pension fund (or its successor fund in relation to the purchaser) or the allocation of amounts from the employer's pension fund ESA to the retirement savings accounts of the pension fund class members.

- g) The employer companies will not be entitled to a deduction under section 11(a) read with section 23(g) in the determination of their taxable income, in respect of the transfer from the pension fund ESA to any pension fund class members' retirement savings account.

**8. Period for which this ruling is valid**

This binding class ruling is valid for a period of three years from 25 August 2020.

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