



SOUTH AFRICAN REVENUE SERVICE

BINDING CLASS RULING: BCR 005

DATE: 22 September 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : PARAGRAPH 2C OF THE SECOND SCHEDULE TO THE ACT

SUBJECT : DISCRETIONARY LUMP SUM PAYMENTS PAID TO PENSIONERS IN TERMS OF AN EVENT CONTEMPLATED BY THE RULES OF THE PENSION FUND

1. Summary

This ruling deals with the question as to whether discretionary lump sum payments to be paid by a pension fund to its members, who are pensioners, in circumstances contemplated by the rules of the pension fund, qualifies as 'an event contemplated by the rules of the pension fund' as envisaged by paragraph 2C of the Second Schedule to the Act.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to sections and paragraphs are to sections of the Act and paragraphs of the relevant Schedules to the Act applicable as at 13 August 2008 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of paragraph 2C of the Second Schedule which at the time of the request read as follows:

"Any lump sum benefit, or part thereof, received or accrued subsequent to the relevant person's retirement or death, or withdrawal or resignation from any pension fund, provident fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event contemplated by the rules of the pension fund, provident fund or retirement annuity fund or in consequence of the approval of a scheme in terms of section 15B of the Pensions Funds Act, 1956 (Act No. 24 of 1956) or regulation 5.3 (1) (b) of the Regulations under the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), shall not be included in gross income pursuant to paragraph (e) of the definition of "gross income" in section 1."

3. Class

The class members to whom this ruling will apply will be the persons, in relation to the Pension Fund, who are in receipt of a pension paid from that Pension Fund (Pensioners).

4. Parties to the transaction

The Applicant: A defined benefit pension fund established by law, as defined in paragraph (a)(i) of the definition of “pension fund” in section 1 of the Act (the Pension Fund). The Fund is a closed pensioner-only defined benefit fund established exclusively to provide pension benefits to retired employees of the employer company and beneficiaries of deceased members of the Fund.

Class members: Referred to hereafter as “Pensioners”.

5. Description of the proposed transaction

One of the rules of the Pension Fund makes provision for the Fund’s Board of Trustees to make use of the surplus in the Fund, as assessed by the Actuary, to grant once-off lump sum payments to Pensioners with the approval of the Board of Directors of the employer company.

The Board of Trustees have resolved and received the necessary approval to make lump sum payments to Pensioners on two specified dates during 2008, in accordance with the said rule of the Pension Fund. The amounts of these lump sum payments were also determined in terms of the resolution passed.

The lump sum payments will be discretionary payments to which the Pensioners have no entitlement. The Pensioners also have no entitlement to the recurrence of such payments.

6. Conditions and assumptions

This ruling is not subject to any conditions or assumptions.

7. Ruling

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

- Paragraph 2C of the Second Schedule will apply to the discretionary lump sum payments that the Board of Trustees of the Pension Fund proposes to make to the Pensioners out of the surplus of the Pension Fund in accordance with the said rule of the Pension Fund.
- Accordingly, the lump sum payments will not be included as “gross income” of the Pensioners and, therefore, will not be regarded as “remuneration” as defined in paragraph 1 of the Fourth Schedule.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of one (1) year as from the date of this ruling until 12 August 2009.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**