

BINDING CLASS RULING: BCR 008

DATE: 16 October 2009

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, DEFINITION OF “GROSS INCOME” PARAGRAPH (j) AND PARAGRAPHS 2(j) AND 12A OF THE SEVENTH SCHEDULE TO THE ACT
SUBJECT : TAX CONSEQUENCES OF PROCEEDS OF ANNUITY POLICIES PURCHASED BY EMPLOYERS TO SETTLE POST-RETIREMENT MEDICAL AID SUBSIDY OBLIGATIONS

1. Summary

This ruling deals with the tax consequences for pensioners whose former employers purchase annuity policies from insurers in the pensioners' names in settlement of the employer's obligation to pay medical aid contribution subsidies to ensure the pensioners continue to be members of medical aid schemes.

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 Seventh Schedule to the Act applicable as at 18 May 2009 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 –

- section 1, definition of “gross income” paragraph (j); and
- paragraphs 2(j) and 12A of the Seventh Schedule.

3. Class

The class members to whom this ruling will apply are –

Current pensioners: Retired former employees of the Applicant and Co-Applicants who are pensioners, or the dependants of deceased former employees who were retired at the time of death, or the dependants of former employees who passed away during employment with the Applicant or Co-Applicants; and

Future pensioners: Current employees and their dependants who are entitled to the same post retirement medical aid (PRMA) subsidy benefit as Current pensioners.

4. Parties to the proposed transaction

The Applicant:	A company
Co-Applicants:	Companies in the same group of companies as the Applicant
The Insurer:	A long-term insurance company
Pensioners:	The class members as defined in 3 above

The Applicant and Co-Applicants are hereafter collectively referred to as "Applicant".

5. Description of the proposed transaction

In terms of its company medical aid policy, the Applicant is obliged to provide assistance to its Pensioners with the payment of contributions to an approved medical aid scheme (approved MAS) after retirement from the Applicant's employ. This policy affects employees employed by the Applicant before a certain date.

The Applicant currently has a post-retirement medical aid (PRMA) subsidy obligation to approximately 1 800 Pensioners. The extent of the subsidy benefit depends on when the employee was employed by the Applicant.

The Applicant intends to settle this PRMA obligation in each case by purchasing an annuity policy from the Insurer in the name of each Pensioner. The annuity policy will replace the monthly MAS subsidy payments that the Applicant is currently obliged to make. The Applicant will pay a lump sum to the Insurer as the premium for the annuity policies to be issued to the Pensioners. Each annuity policy will be in full and final settlement of the Applicant's PRMA subsidy obligation to each Pensioner.

The pertinent features of each proposed annuity policy will be as follows:

- i. The policy will not allow the Applicant to benefit under the policy; nor will it confer rights on the Applicant.
- ii. The policy will only be enforceable against the Insurer by the Pensioner.
- iii. The policy benefits will be payable to an approved MAS for as long as a Pensioner remains a member of such MAS. Any excess of the policy benefit above the contribution payable to the approved MAS will be payable directly to the Pensioner.
- iv. The policy benefits will only be payable directly to the Pensioner in full if the Pensioner ceases to be a member of an approved MAS.
- v. The Pensioner's rights under the annuity policy will not be capable of surrender, commutation or assignment, or of being pledged as security for any loan.
- vi. The Pensioner will not be entitled to a cash payment, other than in circumstances set out in clauses iii and iv above.
- vii. The annuity will be paid for the life of the Pensioner and/or the Pensioner's dependants.
- viii. The Pensioner and the Applicant will not be entitled to cancel the transaction.

6. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that:

- This ruling will not apply to any portion of the annuity benefits paid directly to the Pensioner as described under clauses iii and iv in 5 above.
- This ruling will apply to the annuity policy benefits to be paid to an approved MAS from the commencement date of the policy and will continue to apply until the Pensioner exercises the option not to belong to an approved MAS.
- Should the annuity policy benefits be paid to the Pensioner whilst transferring from one approved MAS to another, this ruling will not apply to those benefits paid directly to the Pensioner whilst in between approved MAS's. However, the ruling will apply to the policy benefits that are paid to the new approved MAS. Should the Pensioner exercise his or her option not to belong to an approved MAS and subsequently decides to enrol in a MAS, this ruling does not apply to the policy benefits paid to the new approved MAS.

7. Ruling

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

- The annuity policy benefits payable to the approved MAS will be included in the gross income of the Pensioner in terms of section 1, definition of "gross income" paragraph (i), read together with paragraphs 2(i) and 12A of the Seventh Schedule.
- No value will be placed on the taxable benefit where the Pensioner meets the criteria set out in paragraph 12A(5) of the Seventh Schedule.

8. Period for which this ruling is valid

This binding class ruling is valid from the date of the ruling for the period during which the annuity policies pay out the policy benefits to the approved MAS and shall remain valid until such time that the Pensioner exercises his or her option or right not to belong to an approved MAS.

9. Note

The underlying principles confirmed in this ruling are currently under review.