

BINDING PRIVATE RULING: BPR 119

DATE: 31 August 2012

Some guidance contained in this ruling is affected by subsequent law changes. Refer to sections (9)(2)(i), 11F and paragraphs 2(1)(a) and 5(1)(a) of the Second Schedule.

ACT : INCOME TAX ACT, NO. 58 of 1962 (the Act)
SECTION : SECTIONS 1, DEFINITION OF “GROSS INCOME”, 9(1)(g), 10(1)(gC), 11(k) AND (n), AND PARAGRAPHS 2(1)(a) AND 5 OF THE SECOND SCHEDULE TO THE ACT
SUBJECT : TRANSFER OF AMOUNTS CONTRIBUTED TO A FOREIGN PENSION FUND TO A SOUTH AFRICAN RETIREMENT ANNUITY FUND

1. Summary

This ruling deals with the tax consequences arising from a transfer of a pension fund interest from a source outside the Republic to a South African retirement annuity fund.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Second Schedule to the Act, applicable as at 15 February 2012 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”, more specifically paragraphs (a) and (e) thereof;
- section 9(1)(g);
- section 10(1)(gC);
- sections 11(k) and (n); and
- paragraphs 2(1)(a) and 5 of the Second Schedule.

3. Parties to the proposed transaction

The Applicant:	A natural person as referred to in paragraph (a) of the definition of “resident” in section 1
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The foreign retirement fund:	A pension fund registered and resident in the United Kingdom (the UK fund)
The South African retirement fund:	A retirement annuity fund registered and resident in South Africa (the SA fund)

4. Description of the proposed transaction

The Applicant is a resident of South Africa but was previously resident and employed in the United Kingdom (UK) for a period in excess of twenty years. Whilst living and working in the UK the Applicant contributed towards the UK fund which is a fund similar to a South African retirement annuity fund and it was not linked to his employer or employment.

The Applicant intends transferring his pension interest in the UK fund to the SA fund by means of Her Majesty's Revenue and Customs (HMRC) Qualifying Recognised Overseas Pension Scheme (QROPS) transfer system as this can have significant taxation and investment advantages to individuals with UK pension rights who have or will become non-resident in the UK for tax purposes.

Under the QROPS transfer system a person may transfer their UK pension interest free from UK tax to an overseas fund that has been approved by the HMRC as a QROPS. The rules of the approved Scheme to which pension funds will be transferred should correspond to the rules governing an authorised UK pension scheme.

To further qualify for a pension transfer into an approved Scheme the following QROPS rules will apply with regard to the transferee who must either –

- be a current member of a personal or occupational pension fund;
- have been or expect to become a non-UK resident for a minimum of 5 years; or
- have not yet purchased an annuity.

The SA fund is an approved fund for purposes of the HMRC QROPS transfer system.

5. Conditions and assumptions

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

- the contributions to the UK fund were not in respect of services rendered to an employer; and
- the SA fund will issue a retirement annuity contribution certificate to the Applicant in respect of the amount transferred to it from the UK fund.

6. Ruling

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

- On transfer of the Applicant's pension interest from the UK fund to the SA Fund:
 - There will be no amount to be included in the Applicant's gross income in terms of the general definition of "gross income" in section 1 as the accrual will be of a capital nature. There will also be no inclusion in terms of paragraph (e) of the definition of "gross income" because the UK fund does not qualify as a "pension fund" as defined in section 1.
 - The amount transferred to the SA fund will qualify for deduction under section 11(n)(i) to the extent provided for by subparagraph (i)(aa) read with paragraph (cc) of the proviso.
- At retirement:
 - The benefits to be received by the Applicant from the SA fund will be from a South African source, consequently, section 9(1)(g) will not be applicable.
 - The annuity that will be received by the Applicant will be included in his gross income under paragraph (a) of the definition of "gross income" and will not be exempt under section 10(1)(gC).
 - The lump sum benefit will be taxable under paragraph 2(1)(a) read with paragraph 5(1)(a) of the Second Schedule. The amount so determined will be included in the gross income of the Applicant under paragraph (e) of the definition of "gross income".

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 2 years from February 2012.

Issued by:

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