



South African Revenue Service

**BINDING CLASS RULING: BCR 068**

DATE: 2 July 2019

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – PARAGRAPHS (c), (f) AND (i) OF THE DEFINITION OF “GROSS INCOME”, 11F AND PARAGRAPH 2(l) OF THE SEVENTH SCHEDULE TO THE ACT**  
**SUBJECT : SURPLUS RETIREMENT FUND ASSETS**

***Preamble***

This binding class ruling is published by consent of the applicant(s) to which it has been issued. It is binding as 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 of transferring surplus retirement fund assets between funds and allocating assets from employer surplus accounts to the retirement accounts of members as provided for by the Pension Funds Act 24 of 1956 (the PFA).

**2. Relevant tax laws**

Unless expressly indicated otherwise in this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Seventh Schedule to the Act applicable as at 28 February 2019. 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), (f) and (i) of the definition of “gross income”;
- section 11F; and
- paragraph 2(l).

**3. Class**

The class members to whom this ruling will apply are the employees, former employees or dependents of former employees referred to in 4.

**4. Parties to the proposed transaction**

The applicants: Resident companies who are participating employers in relation to the co-applicants

Co-applicant 1: A defined benefit pension fund which administers the retirement entitlements of certain class members

- Co-applicant 2: A defined contribution pension fund which administers the retirement entitlements of certain class members
- Co-applicant 3: A defined contribution provident fund which administers the retirement entitlements of certain class members
- The class members: Qualifying members of the co-applicant funds, who are employees, former employees or dependents of deceased employees of the applicants

## 5. Description of the proposed transaction

The class members are entitled to, and the applicants are liable to fund, their post-retirement medical aid benefits. The applicants, with the agreement of the class members, wish to eliminate these liabilities towards the class members by:

- allocating assets in the employer surplus account of co-applicant 1 to the retirement accounts of class members who are members of co-applicant 1 as contemplated in section 15E(1)(b), read with section 15E(1)(d), of the PFA;
- transferring a portion of the assets of the employer surplus account of co-applicant 1 to the employer surplus accounts of co-applicants 2 and 3 as contemplated in section 15E(1)(e) of the PFA; and
- allocating assets in the employer surplus accounts of co-applicants 2 and 3 to the retirement accounts of class members who are members of co-applicant 2 and 3 as contemplated in section 15E(1)(b), read with section 15E(1)(d), of the PFA.

## 6. Conditions and assumptions

This binding class ruling is not subject to any additional conditions and assumptions.

## 7. Ruling

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

- a) The ongoing contributions by the applicants to the co-applicants for the benefit of the class members –
  - will constitute a fringe benefit as contemplated in paragraph 2(l); and
  - will be deductible by the class members in the determination of their respective taxable incomes in accordance with the provisions of section 11F.
- b) The transfer of assets from the employer surplus account of co-applicant 1 to the employer surplus accounts of co-applicants 2 and 3, and lump sum allocations from the co-applicants to the respective retirement accounts of the class members –
  - will not constitute a taxable fringe benefit under paragraph 2(l) for the class members and as a result do not have to be included in

the gross income of the class members, as required by paragraph (j) of the definition of “gross income”;

- will not constitute an amount received by or accrued to the class members, as contemplated in paragraphs (c) and (f) of the definition of “gross income”; and
  - will not be deductible by the class members under section 11F in the determination of their taxable income.
- c) The class members will be taxable on payments to them from the co-applicants in accordance with the definitions of “gross income”, “income”, “taxable income” and the Second Schedule irrespective of whether the amounts payable to them are considered to result from routine contributions to the co-applicants, or to arise out of surplus amounts allocated to the class members in due course from the co-applicants, as the case may be.

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

This binding class ruling is valid for a period of five years from 28 February 2019.

**Legal Counsel: Advance Tax Rulings  
SOUTH AFRICAN REVENUE SERVICE**