



South African Revenue Service

BINDING PRIVATE RULING: BPR 321

DATE: 2 July 2019

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME” AND 11(a)
SUBJECT : SURPLUS RETIREMENT FUND ASSETS

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as between SARS and the applicant and any co-applicant(s) 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 are to sections of 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) – definition of “gross income”; and
- section 11(a).

3. 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 employees
Co-applicant 2:	A defined contribution pension fund which administers the retirement entitlements of certain employees
Co-applicant 3:	A defined contribution provident fund which administers the retirement entitlements of certain employees
Members:	Qualifying current and former employees or dependents of deceased employees of the applicants

4. Description of the proposed transaction

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

- allocating assets in the employer surplus account of co-applicant 1 to the retirement accounts of employees who are members of co-applicant 1 as contemplated by 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 by 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 employees who are members of co-applicant 2 and 3 as contemplated by section 15E(1)(b), read with section 15E(1)(d), of the PFA.

5. Conditions and assumptions

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

6. Ruling

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

- a) Pursuant to the transfer of a portion of the assets from the employer surplus account of co-applicant 1 to the employer surplus accounts of co-applicants 2 and 3 –
 - no amount will be included in the gross income of the applicants; and
 - no amount will be included in the gross income of co-applicants 2 and 3.
- b) The applicants will not be entitled to deductions under section 11(a) in the determination of their respective taxable incomes in respect of –
 - any lump sum and ongoing transfers from co-applicant 1 to co-applicants 2 and 3; and
 - the allocations to the respective members' retirement accounts.

7. Period for which this ruling is valid

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