

*SOUTH AFRICAN REVENUE SERVICE*

**BINDING CLASS RULING: BCR 010**

DATE: 23 October 2009

**ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)**  
**SECTION : PARAGRAPH 2C OF THE SECOND SCHEDULE TO THE ACT**  
**SUBJECT : DISTRIBUTION OF PENSION FUND SURPLUS TO FORMER MEMBERS, PENSIONERS AND/OR THEIR BENEFICIARIES**

**1. Summary**

This ruling deals with the income tax implications attendant upon the distribution of an actuarial surplus to former members, pensioners, and/or their beneficiaries subsequent to their retirement or death, or withdrawal or resignation from a pension fund, or the winding up of such fund and in consequence of the approval of the surplus apportionment scheme as envisaged in section 15B of the Pension Funds Act, No. 24 of 1956 (the PFA).

**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 paragraphs are to paragraphs of the Second Schedules to the Act applicable as at 8 January 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 paragraph 2C of the Second Schedule, read in conjunction with Addendum A to General Note 29 (dated 19 June 2008).

**3. Class**

The class members to whom this ruling will apply will be the former members, pensioners, and/or their beneficiaries of the Pension Fund.

**4. Parties to the proposed transaction**

The Applicant: A Pension Fund (in liquidation)

Class Members: Former members, pensioners and/or their beneficiaries of the Applicant

## **5. Description of the proposed transaction**

The Applicant was placed under curatorship and all member and employer contributions to the Applicant ceased with effect from March 1997. The Applicant was finally dissolved by the Registrar of Pension Funds (the Registrar), as contemplated in section 28 of the PFA in March 2002. Liquidation lump sum payments were made by the Applicant's liquidator as provided for in section 28(12A) of the PFA to the then active members, pensioners and former members (who left the Applicant after 1 April 1996). These lump sum payments to members, pensioners and some former members constituted the full and final settlement of the liquidation proceeds.

The Applicant's liquidator submitted a surplus apportionment scheme to the Financial Services Board (the FSB) as contemplated in section 15B of the PFA. The said surplus apportionment scheme was finally approved by the Registrar on 26 March 2008. The surplus apportionment scheme provided that the actuarial surplus will be distributed as follows:

- **Former members and/or their beneficiaries**

Former members who exited the Applicant from 1980 up to 31 March 1996, and who were traced, will receive a cash lump sum.

Former members who exited the Applicant between 1 April 1996 and 31 March 1997, together with the Applicant's active members at the time of the Applicant's liquidation, will not be covered under the proposed surplus distribution, as the liquidation proceeds received by them at the time were equivalent to their minimum benefits as required in terms of the PFA.

- **Pensioners and/or their beneficiaries**

Pensioners would have had to elect to receive either a pension increase or a cash lump sum. The Applicant's liquidator, however, decided that pensioners should receive the surplus in a form of cash, due to their age and the fact that the direct relationship between the Applicant and the pensioners had already severed.

- **Contingency reserve**

Any balance in the contingency reserve account after settlement of the claims against the Applicant will be added to the distribution to former members, pensioners and/or their beneficiaries as set out above. Amounts due to them who cannot be traced will be dealt with as required by the Registrar. Former members and/or their beneficiaries who exited the Applicant between 1 April 1996 and 31 March 1997,

together with the Applicant's active members (at the time of the Applicant's liquidation), will not be covered under the proposed distribution of the balance in the contingency reserve account.

## **6. Conditions and assumptions**

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

- the surplus will be distributed by the Applicant's liquidator in accordance with the surplus apportionment scheme approved by the FSB on 26 March 2008; and
- no surplus will be distributed to the following categories of members –
  - former members and/or their beneficiaries that exited the Applicant between 1 April 1996 and 31 March 1997; and
  - active members and/or beneficiaries of the Applicant at the time of its liquidation, that is, 5 March 2002.

## **7. Ruling**

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

- The surplus lump sums to be paid to former members, pensioners, and/or their beneficiaries by the liquidator of the Applicant in consequence of the approval of the surplus apportionment scheme will, having regard for the provisions of paragraph 2C of the Second Schedule, not form part of the former members', pensioners' and/or their beneficiaries' gross income.

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

This binding class ruling is valid as from 14 October 2008 until such time that all the surplus lump sums contemplated in this ruling have been paid.

Issued by:

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