

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 075

DATE: 02 February 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 1, PARAGRAPH (e) OF THE DEFINITION OF “GROSS INCOME” AND PARAGRAPHS 1, 2, 2A, 2B AND 2C OF THE SECOND SCHEDULE TO THE ACT
SUBJECT : LUMP SUM BENEFIT TO BE PAID FROM A DEEMED PUBLIC SECTOR FUND AND THE APPLICATION OF FORMULA C

1. Summary

This ruling deals with whether the provisions of “formula C”, as defined in paragraph 1 of the Second Schedule to the Act, will be applicable in determining the amount of a lump sum benefit to be included in the gross income of a person who is in a process of a divorce, who was previously a member of a public sector fund but transferred his pension fund interest to a pension fund deemed by legislation to be a public sector fund.

2. Relevant tax laws

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

In this ruling legislative references to sections and paragraphs are to sections of the Act and paragraphs of the Second Schedule to the Act applicable as at 15 August 2008 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, paragraph (e) of the definition of “gross income”; and
- paragraphs 1, 2, 2A, 2B and 2C of the Second Schedule.

3. Parties to the proposed transaction

- The Applicant: A person referred to in paragraph (a) of the definition of “resident” in section 1, who is employed by an Independent Public Institution
- The Institution: An Independent Public Institution
- The Pension Fund: The pension fund of the Institution which –
- complies with the definition of “pension fund” as contained in section 1; and
 - is regulated by the Pension Funds Act, No. 24 of 1956

4. Description of the proposed transaction

The Applicant joined the Institution in July 1991 and has been a member of the Pension Fund ever since. Before joining the Pension Fund, the Applicant was a member of a public sector fund (that is, a fund referred to in either paragraph (a) or (b) of the definition of “pension fund” in section 1), which he joined on 1 July 1976. When the Applicant joined the Institution in July 1991, he had a choice to either remain a member of that public sector fund or to transfer his pension fund interest to the Pension Fund. At that time the Applicant chose to transfer his pension fund interest to the Pension Fund.

The Pension Fund is a private sector fund falling within paragraph (c) of the definition of “pension fund” in section 1, but at the time of transfer the Applicant’s benefits as a former member of the public sector fund were preserved under the provisions of applicable legislation at that time. In terms of the legislation at that time the Pension Fund was deemed to be a pension fund referred to in paragraph (a) of the definition of “pension fund” in section 1.

The Applicant is in the process of a divorce. In terms of a draft settlement agreement, the Applicant’s spouse will receive a portion of the pension fund interest of the Applicant and any income tax payable on the portion to be allocated to the Applicant’s spouse will be paid by the Pension Fund on the Applicant’s behalf.

Prior to 01 March 1998, any lump sum benefit received by or accrued to a person from a public sector fund was excluded from gross income in terms of the then paragraph (e) of the definition of “gross income” in section 1. However, the Act was amended and as from 1 March 1998 gross income includes any lump sum benefit, received by or accrued to a person from public sector funds in terms of the then amended paragraph (e) of the

definition of “gross income” in section 1, by taking into account the provisions of formula C in paragraph 1 of the Second Schedule.

In order to give effect to the draft settlement agreement and ascertain the amount of income tax to be paid on the portion of the pension fund interest to be paid to the spouse of the Applicant, the Applicant requested confirmation that the provisions of paragraphs 2, 2A, and 2B and formula C in paragraph 1 of the Second Schedule will apply in respect of that portion to be paid to the spouse.

5. Conditions and assumptions

This ruling is not subject to any conditions and assumptions.

6. Ruling

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

- The provisions of formula C in paragraph 1 of the Second Schedule will be applicable in calculating the lump sum benefit, payable from the pension interest of the Applicant to his non-member spouse in his divorce proceedings, to be included in his gross income.

7. Period for which this ruling letter is valid

This binding private ruling is valid for a period of two (2) years as from 8 September 2008.

Issued by:

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