SOUTH AFRICAN REVENUE SERVICE

The guidance contained in this ruling is affected by subsequent law changes.

BINDING PRIVATE RULING: BPR 011

DATE : 6 March 2008

ACT : INCOME TAX ACT, 58 OF 1962 ("the Act")
SECTION : PARAGRAPHS 1, 2A AND 6 OF THE SECOND SCHEDULE TO THE ACT
SUBJECT : TRANSFER OF A PRE-1 MARCH 1998 AMOUNT FROM A PENSION FUND AS AN OWN CONTRIBUTION TO OTHER RETIREMENT FUNDS

1. Summary

As part of Company A's restructuring programme, it is disposing of some of its non core businesses and subsidiaries. As a result, the employees of such businesses or subsidiaries are not allowed to remain members of Company A's pension fund and retirement fund ("retirement funds") and have to transfer their benefits to other funds.

These retirements funds fall within paragraphs (a) or (b) of the definition of **"pension fund"** in section 1 of the Act. Prior to 1 March 1998, any lump sum benefit received by or accrued to a person from these retirements funds were excluded from gross income in terms of paragraph (e) of the definition of **"gross income"** in section 1 of the Act (hereinafter referred to as the "pre-1 March 1998 amount").

As from 1 March 1998, the Act was amended to include in gross income any lump sum benefit (as determined in accordance with **"formula C"** as defined in paragraph 1 of the Second Schedule to the Act) received by or accrued to a person from these retirements funds in terms of paragraph (e) of the definition of **"gross income"** in section 1 of the Act

The issues considered in this ruling are:

- In the event that the pre-1 March 1998 amount is transferred to a provident fund, will it be seen as the Applicant's own contribution to the fund?
- When the Applicant exits from the provident fund in future, will the Applicant be able to get a deduction in respect of such contribution?

2. Relevant tax laws

This ruling is a binding private ruling which was requested by the Applicant in accordance with the requirements of section 76E of the Act and issued by Legal and Policy Division: Advance Tax Rulings in accordance with section 76Q of the Act.

All legislative references to sections and paragraphs are to section in the Act and paragraphs in the Second Schedule to the Act applicable on 11 May 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act.

Relevant provisions of the Act are paragraphs 1, 2A and 6.

3. Parties to the transaction

Applicant: A South African resident who is an employee of Company A and a member of the retirement funds.

retirement funds: Company A's Retirement Fund and Company A's Pension Fund. Both these funds –

- comply with **"pension fund"** as defined in section 1; and
- are regulated by the Pension Funds Act, 1956.

Company A: A South African resident and incorporated company.

4. Description of the proposed transaction

As part of Company A's publicly announced restructuring programme, a significant number of employees will exit from the retirement funds as a consequence of the disposal by Company A of its non-core businesses, either through a share sale or asset sale (disposal of a going concern in terms of section 197 of the Labour Relations Act, No 66 of 1995).

The rules of the retirement funds do not allow these employees to remain members of the retirement funds, nor to preserve their benefits in the retirement funds.

In terms of the rules of the retirement funds, in the case of a member exiting to the private sector as a result of a sale of shares or a disposal of a going concern

- a lump sum benefit accrues to the member,
- the member is not entitled to be paid the accrued benefit in cash, and
- the retirement funds are required to transfer the accrued benefit to one or more approved funds (either the new employer's fund, or where possible a preservation fund or retirement annuity fund).

The Applicant has been a member of Company's A retirement funds since 5 December 1974 and will exit from the retirement funds during 2007.

The Applicant will receive a lump sum benefit from the retirement funds of which the retirement funds will transfer –

- a portion of the lump sum benefit, determined in accordance with **"formula C"** as defined in paragraph 1, to either another pension fund or pension preservation fund or retirement annuity fund; and
- the balance of the lump sum benefit to a provident fund.

5. Specific conditions and assumptions

This binding private ruling is made subject to the following conditions and assumptions:

- The provident fund to which the pre-1 March 1998 amount is transferred by Company A's Retirement fund must recognise the pre-1 March 1998 portion of the transfer as an own contribution that is paid by the member in terms of the rules of the providend fund.

- The transfer must take place as a consequence of the disposal by Company A of its non-core businesses, either by share sale or asset sale to the private sector.

6. Specific ruling

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

- The Applicant will be entitled to a deduction in respect of the amount transferred by the retirements funds on his/her behalf for his/her benefit, being his/her contributions to another pension fund, pension preservation fund or retirement annuity fund in terms of paragraph 6(a), limited to the amount determined in **"formula C"** as defined in paragraph 1.
- The amount transferred by the retirement funds on his/her behalf for his/her benefit to a provident fund by the Applicant will be regarded as the Applicant's own contribution to that provident fund as contemplated in proviso (i) to paragraph 6.
- On withdrawal or resignation from the provident fund, the Applicant will be entitled to a deduction in terms of proviso (i) to paragraph 6 in respect of the said transfer, being his/her own contributions to the provident fund which were not previously allowed as a deduction.

7. Period for which this ruling letter is valid

This binding private ruling will remain valid until 29 February 2012 or until a change to the applicable law renders it inoperative, whichever occurs earlier.

Issued by:

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