

BINDING CLASS RULING: BCR 020

DATE: 21 July 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTION 9(1)(g)
SUBJECT : TRANSFER OF PENSION AND PROVIDENT FUND CONTRIBUTIONS FROM SOUTH AFRICAN PENSION AND PROVIDENT FUNDS TO FOREIGN PENSION AND PROVIDENT FUNDS

1. Summary

This ruling deals in the main with the transfer of pension and provident fund contributions made by foreign employees to funds established in South African (the South African Funds), from the South African Funds to funds established in a foreign country (the Foreign Funds) where the foreign employees are resident or in the case of a few instances, the withdrawal of the contributions from the South African Funds.

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 sections are to sections of the Act applicable as at 4 February 2010 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 9(1)(g).

3. Class

The Class members to whom this ruling will apply will be the Class members as described in point 4 below.

4. Parties to the proposed transaction

The Applicant: A holding company that is a "resident" as defined in section 1

The Class members: The foreign employees or former foreign employees or the dependants of such

employees of the Applicant or any of its local or foreign subsidiaries

5. Description of the proposed transaction

The Applicant and its subsidiaries (local and foreign) form a group of companies (the Group).

The Group's Pension and Provident Funds were established in South Africa with the object of providing benefits for the employees or former employees or the dependants of such employees of the Applicant and any of its subsidiaries, including the foreign subsidiaries (the Employers).

Due to the fact that the Employers did not have their own pension and provident funds established in the foreign country where the foreign employees (the Class members) of the Employers are resident, these foreign employees have been contributing to the South African Funds. It is the Applicant's intention to transfer the membership of most of the Class members, along with their "Fund Credit" as defined in the Rules of the respective South African Funds, from the South African Funds to the Foreign Funds. The remaining Class members will withdraw from the South African Funds as elected.

6. Conditions and assumptions

This ruling is not subject to any conditions and assumptions.

7. Ruling

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

- The proposed transfer of the Class members and their Fund Credits from the South African Funds to the Foreign Funds will not result in any amounts being received by or accrued to those Class members for purposes of section 9(1)(g) and the definition of "gross income" in section 1, therefore, no amounts will accordingly be subject to income tax in South Africa in the hands of such Class members.
- The provisions of section 9(1)(g) will not be applicable where the Class members who rendered services entirely in the foreign country during the ten years preceding the transfer of their Fund Credits from the South African Funds to the Foreign Funds, or the withdrawal of their Fund Credits from the South African Funds, therefore, no amounts will accordingly be subject

to income tax in South Africa in the hands of such Class members in terms of section 9(1)(g).

- The withdrawal by the remaining Class members of their Fund Credits from the South African Funds will not constitute amounts received by or accrued to them from a South African source, to the extent that the services were rendered by them in the foreign country.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five (5) years from 24 February 2010.

Issued by:

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