

BINDING CLASS RULING: BCR 019

DATE: 28 May 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTION 1, PARAGRAPH (e) OF THE DEFINITION OF “GROSS INCOME” AND THE DEFINITION OF “RETIREMENT FUND LUMP SUM WITHDRAWAL BENEFIT”, AND SECTION 10(1)(i)(xv)(bb) AND PARAGRAPH 2(b) OF THE SECOND SCHEDULE TO THE ACT

SUBJECT : ACCRUAL DATE OF A LIQUIDATION BENEFIT

1. Summary

This ruling deals with the accrual date of a liquidation benefit payable by a defined contribution provident fund to its members as a result of it being liquidated and the late penalty interest that may be payable by the fund once the Registrar of Pension Funds (the Registrar) has directed the liquidator of the fund to complete the liquidation.

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 and paragraphs are to sections of the Act and paragraphs of the Second Schedule to the Act applicable as at 20 April 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 –

- section 1, paragraph (e) of the definition of “gross income”;
- section 1, definition of “retirement fund lump sum withdrawal benefit”;
- section 10(1)(i)(xv)(bb); and
- paragraph 2(b) of the Second Schedule.

3. Class

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

4. Parties to the proposed transaction

The Applicant: A defined contribution provident fund (in liquidation), registered with the Financial Services Board and approved by the South African Revenue Service

Members: Members of the Applicant who will receive liquidation benefit payments

5. Description of the proposed transaction

The Applicant has been placed in liquidation and will have to pay the liquidation benefit to its members.

The employer participating in the Applicant underwent a corporate restructuring, which resulted in the Applicant being placed in liquidation.

The Registrar of Pension Funds (the Registrar) appointed a liquidator and the liquidation process was deemed to have commenced when the liquidator was appointed as envisaged in section 28(2) of the Pension Funds Act, No. 24 of 1956 (the PFA).

Upon the liquidator's appointment all the accumulated funds held by the Applicant were disinvested and deposited into a money market instrument and the members' and the employer's contributions were stopped.

The liquidator submitted the preliminary accounts to the Registrar, as envisaged in section 28(4)(a) of the PFA and Schedule K as prescribed in terms of Regulation 29 of the PFA.

The Registrar directed the liquidator to give notice that the preliminary liquidation account was open for inspection for a period of 30 days as provided for in section 28(6) of the PFA. The notice also advised interested persons to lodge objections (if any) to those preliminary accounts, as provided for in section 28(7) of the PFA.

Upon approval of the account being obtained from the Registrar, the Applicant will pay the liquidation benefit to its members who were members at the date of liquidation. In terms of the rules governing the Applicant, a late penalty interest will accrue to a member if more than 30 days elapse between the date on which any liquidation benefit was payable to such a member and the date of actual payment thereof.

The Applicant will be deregistered by the Registrar once it has distributed all its assets and discharged all its liabilities.

6. Conditions and assumptions

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

- the ruling concerns the tax treatment of the liquidation benefit payable by the Applicant to its members and the late penalty interest that may be payable by the Applicant to its members once the Registrar has directed the liquidator to complete the liquidation;
- the tax treatment of the Applicant's surplus was not considered and does not form part of this ruling; and
- the Registrar will approve the distribution of all the amounts referred to in point 7.2 below although not payable at the time but ascertainable, as provided for in the definition of "lump sum benefit" in paragraph 1 of the Second Schedule.

7. Ruling

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

- A liquidation benefit will accrue to the Applicant's members, as provided for in paragraph 2(b)(ii) of the Second Schedule, on the date that the Registrar directs the liquidator to complete the liquidation as envisaged in section 28(8) of the PFA.
- The amount of the accrual of the liquidation benefit payable to a member will comprise of the following for purposes of paragraph 2(b)(ii) of the Second Schedule –
 - the member's individual reserve at date of liquidation, as contemplated in section 14A(b) of the PFA, read together with section 14B(2)(b) of the PFA;
 - the proportionate share of interest earned on the money market instrument from the date of liquidation of the Applicant to the date of accrual envisaged in section 28(8) of the PFA; and
 - the proportionate share of interest on any late payment of the liquidation benefit (late penalty interest), earned during the Applicant's 30 days turnaround time as envisaged in the rules of the Applicant.
- The liquidation benefit to be payable to the member by the Applicant as contemplated in 7.2 above, but excluding any late penalty interest that might be payable, will be taxable as a "retirement fund lump sum withdrawal benefit", as envisaged in section 1, paragraph (e) of the definition of "gross income", read together with paragraph 2(b) of the Second Schedule and the definition of "lump sum benefit" in paragraph 1 of the Second Schedule.

- Any late penalty interest as contemplated in the rules of the Applicant will not form part of the “retirement fund lump sum withdrawal benefit” as envisaged in paragraph (e) of the definition of “gross income” in section 1 and defined in section 1, but it will be an additional and separate liability of the Applicant.
- Late penalty interest will be “gross income”. However, it will qualify for the exemption from normal tax under section 10(1)(i)(xv)(bb).

8. Period for which this ruling is valid

This binding class ruling, issued in July 2009, is valid until the Applicant has been duly deregistered by the Registrar as envisaged in section 28(15)(a) of the PFA.

Issued by:

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