

BINDING PRIVATE RULING: BPR 196

DATE: 1 July 2015

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

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1), DEFINITION OF "INCOME", 9(2)(i), 10(1)(gC)(ii), PARAGRAPHS 1, DEFINITION OF "REMUNERATION" AND 2(1) OF THE FOURTH SCHEDULE TO THE ACT
SUBJECT : EMPLOYEES' TAX – MONTHLY PENSION BENEFITS IN RESPECT OF FOREIGN SERVICES RENDERED

1. Summary

This ruling deals with whether or not a pension fund will be liable to deduct employees' tax from the monthly pension benefits payable to its retired members who are residents of South Africa in respect of services rendered outside South Africa (foreign services).

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Fourth Schedule thereto as at 19 May 2015 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of the provisions of –

- section 1(1), definition of "income";
- section 9(2)(i);
- section 10(1)(gC)(ii);
- paragraph 1, definition of "remuneration"; and
- paragraph 2(1).

3. Parties to the proposed transaction

The Applicant: A pension fund established, managed and administered in South Africa

4. Description of the proposed transaction

The Applicant pays monthly pension benefits to its members after their retirement. Some of the retired members would have rendered services in South Africa,

others in South Africa and in foreign countries and others exclusively in foreign countries, as a result of the secondment of employees from a South African employer to one of its associated foreign companies (foreign employer). The secondment terms determine that the foreign employer remunerates the seconded employees and pays their pension fund contributions directly to the Applicant.

The members would have returned to South Africa on retirement and would be residents of South Africa.

5. Conditions and assumptions

This ruling is subject to the following additional conditions and assumptions:

- The ruling applies to monthly pension benefits which will be received by or accrue to residents.
- The ruling does not apply to lump sums, death benefits or payments in respect of termination of service prior to date of retirement which will be received by or accrue to residents.

6. Ruling

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

- The Applicant will not be liable to deduct or withhold employees' tax under paragraph 2(1) from the monthly pension benefits which will be received by or accrue to residents in respect of foreign services.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 19 May 2015.