

SOUTH AFRICAN REVENUE SERVICE

BINDING CLASS RULING: BCR 003

DATE: 12 May 2009

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

SECTION : SECTION 1 AND PARAGRAPH 2C OF THE SECOND SCHEDULE TO THE ACT

SUBJECT : DISTRIBUTION OF AN ACTUARIAL SURPLUS TO FORMER MEMBERS AND ACTIVE MEMBERS OF A RETIREMENT FUND

1. Summary

This ruling deals with the income tax implications and principles attendant upon the distribution of an actuarial surplus of a retirement fund which is attributable in part to former members and active members as well as to the principal employer.

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 18 April 2008 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act and relevant Schedule.

This ruling has been requested under the provisions of –

- section 1, definition of the term “**gross income**”; and
- paragraph 2C.

3. Class

The class members to whom this ruling will apply will be the members of the retirement fund.

4. Parties to the proposed transaction

The Applicant:	A retirement fund registered with the Financial Services Board and recognised as a provident fund by the South African Revenue Service
Company A:	A limited liability resident company, which is the principal employer
The Members:	Former members and active members of the retirement fund

5. Description of the proposed transaction

The Applicant has accumulated an actuarial surplus attributable in part to its former members, active members and Company A as the principal employer. A scheme for the apportionment of the actuarial surplus (the Apportionment Scheme) has been proposed by all the parties to the proposed transaction.

In terms of the Apportionment Scheme the actuarial surplus attributable to Company A will be reallocated in part to the former members and in part to active members. The distribution will be –

- included in the lump sum payments which will be made to the former members; and
- credited to the accounts of active members to be included in lump sum payments which will be made to active members on their retirement, death or withdrawal from the retirement fund.

6. Conditions and assumptions

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

- the Apportionment Scheme is approved by the Registrar of Pension Funds under the provisions of section 15B of the Pension Funds Act, No. 24 of 1956; and
- the distributions to be made to the members relate to the actuarial surplus.

7. Ruling

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

- The distribution of the actuarial surplus to be included in lump sum payments to be made to former members under paragraph 2C of the Second Schedule will not constitute gross income of those former members.

- The distribution of the actuarial surplus to be credited to the accounts of active members to be included in lump sum payments which will be made to active members on retirement, death or withdrawal from the retirement fund will not qualify to be excluded from the gross income of those active members under paragraph 2C of the Second Schedule upon the eventual resignation, death, withdrawal or retirement of such members from the retirement fund.

8. Period for which this ruling is valid

This binding class ruling is valid as from 18 April 2008 until such time that the actuarial surplus has been distributed to the members of the retirement fund.

Issued by:

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