

BINDING CLASS RULING: BCR 045

DATE: 24 March 2015

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 1(1) DEFINITION OF “GROSS INCOME”
PARAGRAPHS (c), (f) AND (i)
SUBJECT : POST RETIREMENT MEDICAL AID BENEFITS

1. Summary

This ruling deals with the consequences for employees whose post retirement medical aid benefits will be cancelled and replaced with a once-off contribution to the employees' pension fund.

2. Relevant tax laws

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

In this ruling references to paragraphs are to paragraphs of the definition of “gross income” in section 1(1) of the Act, applicable as at 12 March 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 paragraphs (c), (f) and (i) of the definition of “gross income”.

3. Class

The class members to whom this ruling will apply are described in point 4 below.

4. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa

The Pension Fund: A pension fund registered under the Pension Funds Act, No. 24 of 1956 and a resident of South Africa

The Class Members: Employees who were employed on a full-time basis by the Applicant before 1 January 2007 and who will still be in its employ at the time of the transaction (qualifying employees)

5. Description of the proposed transaction

The Applicant's human resources manual makes provision for qualifying employees to each receive a post-retirement medical aid subsidy (the subsidy) upon retirement.

The aforementioned subsidy is only available to qualifying employees and their dependents at the date of retirement. Qualifying employees were required to sign an agreement for the provision of the abovementioned subsidy upon retirement. That agreement contains a term that no change to it shall be of any force, unless it is reduced to writing and signed by both the parties (the Applicant and the Class Members).

The Applicant intends to extinguish its obligation towards the qualifying employees in respect of the subsidy by making a compulsory additional contribution, determined with reference to an actuarial valuation of the post-retirement medical aid benefit, into the account of each qualifying employee with the Pension Fund.

This contribution is intended to provide the qualifying employees with sufficient cash, in the form of their monthly pension amounts, to be able to pay the contributions that would currently be payable from the date of retirement by the Applicant in terms of the subsidy scheme.

The rules of the Pension Fund, as applicable to the Applicant, will be amended to require the Applicant, as the participating employer, to make an additional compulsory contribution into the qualifying employee's account with the Pension Fund during the month in which the transaction is implemented. The Pension Fund will obtain approval from the Financial Services Board for this rule amendment.

This contribution will form part of the monthly compulsory contributions to be made to the Pension Fund by the participating employer, as contemplated in the 'compulsory contribution rule' of the Pension Fund, rather than an additional voluntary contribution as contemplated in the 'voluntary contribution rule' of the Fund.

This compulsory contribution differs from the additional contribution contemplated in the 'voluntary contribution rule' in the sense that the employee may instruct, or request, the employer to make a contribution under the 'voluntary contribution rule', while this is not possible in the case of compulsory contributions.

The Applicant has consulted with the Class Members as to the reasons for its decision and has considered alternative approaches in this regard, but has arrived at the conclusion that the course it proposes is in the best interests of the Applicant and of the Class Members.

The final decision to extinguish the post-retirement medical subsidy benefits and make the additional contribution will be made by the Applicant's management committee and communicated to the Class Members.

The Class Members will not have a choice or input as to the form or amount of medical aid benefits that they will receive. In other words, if the scheme is implemented by the Applicant's management committee, the post-retirement benefit will be unilaterally terminated and an additional compulsory contribution

into each Class Member' account will be made in terms of the Pension Fund rules, during the implementation month.

The additional compulsory contribution is therefore in no manner payable on instruction of, or agreement with, the Class Members, but rather by reason of a decision by the Applicant's management committee.

6. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

7. Ruling

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

The additional compulsory contribution by the Applicant to the Pension Fund –

- will not constitute a taxable benefit to be included in the gross income of the Class Members, as contemplated in paragraph (*i*) of the definition of "gross income"; and
- will not constitute an amount received by or accrued to the Class Members, as contemplated in paragraphs (*c*) and (*f*) of the definition of "gross income".

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 3 years from 12 March 2015.