

## Leveraged Legal Products

Advance Tax Rulings  
ATR-01-P1-T10

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**Date**  
15 September 2020



South African Revenue Service

The Directors  
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### Via SARS eFiling

Dear Sirs / Mesdames

### **BINDING CLASS RULING: UNIVERSITIES SOUTH AFRICA**

This is a binding class ruling issued in accordance with section 78(2) of the Tax Administration Act 28 of 2011 (TA Act).

#### **1. BINDING CLASS RULING**

##### **1.1 Persons to whom this ruling applies**

This ruling letter has been applied for by the Applicant, Universities South Africa, with income tax reference number 9031/765/15/0 and the following class members:

- The higher education institutions represented by Universities South Africa listed in Annexure A.

##### **1.2 Relevant tax laws**

The ruling has been requested on the interpretation and application of section 10(1)(g) of the Income Tax Act No. 58 of 1962 (the "Act").

##### **1.3 Description of the proposed transaction**

1.3.1 The Applicant is a statutory body, formerly known as Higher Education South Africa, established in terms of section 38(1) of the Higher Education Act. It represents a number of different higher education institutions, including universities and universities of technology, who are the Class Members.

1.3.2 The Class Members, represented by the Applicant, award Post-Doctoral Research Fellowship ("PDRFs") to post-doctoral research fellows. These PDRFs are awarded to enable the fellows to continue their post-doctoral studies in a particular field of expertise and are, therefore, used to enhance their knowledge, intellect and expertise.

- 1.3.3 The Applicant has adopted a best practice policy pertaining to PDRFs. The PDRF Policy contains the rules and procedures to be followed by the Class Members in respect of the funding and advertising of PDRFs, the requirements and application process for PDRFs, and the process to be followed in awarding, accepting, payment and extension of a PDRF. The Class Members have indicated that they will grant PDRFs based on the PDRF policy at all times.

#### **1.4 Conditions and assumptions**

Section 78(3) of the TA Act provides that a binding class ruling may be made subject to the conditions and assumptions prescribed in the ruling.

This binding class ruling is not made subject to additional conditions and assumptions.

#### **1.5 Ruling**

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

- 1.5.1 The bursary awards provided for in the PDRF policy document satisfy all the statutory requirements of a bursary as contemplated in section 10(1)(g) of the Act.
- 1.5.2 If a fellow is considered to be an 'employee', as defined, at the time the PDRF is awarded, or during its course, or if a relative of an employee receives a bursary or scholarship, the PDRF award will only be exempt to the extent of the limitations as stated in section 10(1)(g)(i) and (ii).

#### **1.6 Period for which this ruling letter is valid**

This binding class ruling is valid for a period of 5 (five) years from 1 June 2020.

## **2. STANDARD CONDITIONS AND ASSUMPTIONS**

### **2.1 Basis of the ruling(s) given in this letter**

The ruling(s) set forth in this ruling letter only apply to the provisions of the tax laws identified in this binding class ruling in connection with the proposed transaction described herein, and are based upon the following:

- 2.1.1 The information, documents, representations, facts considered and assumptions presented being true and accurate.
- 2.1.2 Any legal agreements or contracts entered into (or proposed to be entered into) in connection with the proposed transaction being legally valid and enforceable in accordance with their stated terms, the parties to those agreements timeously satisfying their obligations under those agreements, and those agreements otherwise being carried out in accordance with their terms.
- 2.1.3 The interpretation and application of tax laws, regulations, binding general rulings, and case law in effect as of the date of this binding class ruling.

## 2.2 The understanding of the South African Revenue Service (SARS) of the proposed transaction

This ruling letter and the ruling(s) set forth herein are based upon the understanding of SARS of the proposed transaction as described herein.

*Please note that if you believe that this understanding is incorrect, inaccurate or incomplete, it is your obligation to notify SARS immediately. The failure to rectify a misunderstanding of a material fact may result in the ruling being withdrawn or modified.*

## 2.3 Subsequent changes in tax law

2.3.1 This binding class ruling letter will cease to be effective in any of the following circumstances:

- The provisions of the tax laws that are the subject of this binding class ruling are repealed or amended.
- A court overturns or modifies an interpretation of the provisions of the tax laws on which the rulings set forth herein are based unless:
  - The decision is on appeal.
  - The decision is fact-specific and the general interpretation upon which the rulings were based is unaffected.
  - The references in the decision to the interpretation upon which the rulings were based are *obiter dicta*.

2.3.2 In any of these circumstances, the ruling letter will cease to be effective immediately upon:

- The effective date of the repeal or amendment of the provisions in question.
- The date of the reasons for judgment.

2.3.3 SARS is not obliged to notify the Applicant, or any Co-Applicant(s) if applicable, or any Class Member(s), or to otherwise publish a notice of withdrawal or modification.

## 2.4 Fraud, misrepresentation or non-disclosure

2.4.1 This binding class ruling letter is void *ab initio* in any of the following circumstances:

- The proposed transaction is materially different from the transaction actually carried out.
- There is fraud, misrepresentation or a non-disclosure of a material fact.
- Any condition or assumption prescribed in this binding class ruling is not satisfied or carried out.

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2.4.2 A fact is considered material if it would have resulted in a different ruling had SARS been aware of it when issuing this binding class ruling letter.

**2.5 Other requirements and limitations**

This ruling letter and the ruling(s) set forth herein are also subject to any other requirements and limitations set forth in Chapter 7 of the TA Act, as well as any requirements and limitations set forth in any general binding ruling issued under section 90 of the TA Act.

This ruling letter and the specific ruling(s) set forth in it only apply to the Applicant and any Co-Applicant(s) and the Class Members identified herein. This ruling letter may not be cited in any proceeding, including court proceedings, other than a proceeding involving the Applicant or any Co-Applicant(s) or the Class Members identified herein.

Sincerely



**Anton Schoon  
Specialist**



**Kotrus Swanepoel  
Manager**

for **COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

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## **ANNEXURE 2**

### **POLICY for POST DOCTORAL RESEARCH FELLOWSHIPS / POST DOCTORAL RESEARCH FELLOWS (“PDRF”/ “PDRFs”)**

#### **1. The objectives of PDRF**

The primary objectives of PDRFs include the following:

- To place higher education institutions at the forefront of research and innovation;
- To generate new knowledge and transfer knowledge and skills;
- To enable outstanding doctoral graduates to obtain experience of research and innovation at higher education institutions;
- To provide an opportunity to promising young researchers from different universities to enhance their research skills and expertise;
- To expand on existing research and ideas and to pursue new lines of research;
- To interact with other academics and post doctoral fellows;
- To emphasise an increase in publication outputs;
- To establish and enhance South African intellect;
- To develop knowledge for stakeholders such as the government, business, industry and social communities; and
- To promote national and international conference attendance by post doctoral fellows and the presentation of research papers at these conferences.

#### **2. Identifying a PDRF opportunity**

The opportunity and funding for a PDRF may arise in a variety of ways, but is generally either:



- awarded to a host academic staff member (“host academic”) via a University Research Sub-Committee or by an outside funding agency as part of a larger research grant; **or**
- awarded to a recent doctoral graduate by the relevant academic department, or as a result of an application for funding to an external funding body (for example the National Research Foundation (“NRF”), the Medical Research Council (“MRC”), the Claude Leon Foundation, the Andrew Mellon Foundation, the Friedland Trust, the Percy Fox Scholarship, etc.)

The onus is on the host academic to ascertain that there is sufficient funding from a bona fide bursary source for a PDRF.

Should funds from contract research be considered for PDRFs, the contract must make express provision that a bursary (in the form of a PDRF) will be awarded, and **may not** be payment in return for services rendered or specific outcomes in order to comply with South African Revenue Service (“SARS”) legislation for the award to be regarded as a bona fide bursary or scholarship. For record-keeping purposes, a copy of the contract must also be submitted to the PDRF Co-ordinator at the Division for Research Development (hereafter referred to as the PDRF Co-ordinator<sup>1</sup>).

### **3. Advertising a PDRF opportunity**

The relevant host academic/host department must advertise such an opportunity in order to comply with the SARS regulations governing ‘open bursaries’ and the existing University policy for the payment of bursaries awarded by departments.

The advertisement must be placed in at least one public forum other than the University’s intranet or internal electronic bulletin board in order to attract applications from postdoctoral candidates from other universities. Examples of such public forums include the NRF’s website, newspapers and flyers and pamphlets at departmental open days.

Copies of advertisements must be retained for record-keeping purposes. A copy of the advertisement must also be lodged with the PDRF Co-ordinator,

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<sup>1</sup> The PDRF Co-ordinator referred to in this policy will be the person responsible for administering the policies and internal controls of the Institution relating to PDRFs. Such a persons will likely perform their function as part of the Administrative/Bursary Offices’ functions of the University.

to ensure that the Division for Research Development is aware of all current PDRFs being offered at the University.

#### **4. Special conditions applicable to PDRFs**

- PDRFs are not employees of the University and they can therefore not qualify for any employee benefits including retirement funding, membership of retirement funds, support for a medical aid scheme or any for other employee benefits. This does not preclude PDRFs from performing temporary tasks for remuneration (up to a maximum of 12 hours per week – See paragraph 7.5.2), for example conducting ad hoc tutorials or marking examination papers in a similar manner as other post graduate students. This remuneration would be taxable on the same basis as for other part-time employees for services rendered.
- The purpose of PDRFs is not to relieve the workload of a higher education institution's teaching staff. A PDRF's purpose is rather to do research and to publish research results in accredited journals.
- PDRFs will not form part of the staff complement for the purposes of determining the University's employment equity statistics.
- International PDRFs must apply for the appropriate visas/work permits for the purposes of doing research or taking academic sabbaticals in South Africa.
- PDRFs will be enrolled as research fellows and will be issued with access cards which differ from those of employees and which can be used to enable them to have access to the necessary facilities of the higher education institution. These cards may, in some instances, be student cards and student library cards.
- If the PDRF is a relative of an employee at the University that awards the fellowship, the PDRF award will only be exempt from normal tax to the extent that the specific provisions of section 10(1)(q)(ii) of the Income Tax Act, 58 of 1962 have been met.

## **5. Requirements to qualify for a PDRF and process of award of PDRFs**

The host academic, in consultation with the Head of Department (“HOD”), is responsible for:

- accepting and acknowledging applications for PDRFs;
- interviewing and selecting an appropriate candidate (interviewing and selecting an appropriate candidate should be done by a constituted panel consisting of various stakeholders including academic and research members within the host department and members of management and/or administration within the University); and
- during the interviewing and selection process it must be ensured that the proposed candidate holds, or will soon hold, an appropriate doctoral degree, has an extended research track record and/or publication record and has experience of delivering papers at conferences.

At the time of the award, the candidate should have graduated with his/her doctorate degree no longer than within the previous five years.

After the interviewing and selection process is completed, the host academic must supply the PDRF Co-ordinator with the following details of the chosen applicant:

- the name and full contact details of the selected candidate;
- the amount of the award and its source/s (description of the original source/s and the University cost entity/centre from where it will be paid);
- the term of the award (one or two years initially);
- proof of doctoral qualification (copy of doctoral degree (“PhD”) or proof of satisfactory fulfilment of the University’s requirements for a PhD), copy of Curriculum Vitae (“CV”);
- a copy of the applicant’s Identity Document (“ID”) or passport photo page; and
- in the case of an international fellow, a copy of the applicant’s Visa.

A formal Letter of Award, stipulating the terms of the PDRF and amount of the award must then be drawn up by the PDRF Co-ordinator and sent to the selected candidate (by e-mail and normal mail) and to the host academic (by e-mail only).

In the case of an international PDRF candidate, the Letter of Award must include the relevant documentation to be sent to the selected candidate which provides detail of the assistance which is offered by the International Office ("IO"). A copy of the Letter of Award must be placed on the selected candidate's PDRF file by the PDRF co-ordinator.

## **6. Acceptance of the Award – Enrollment & Memorandum of Understanding**

By way of acceptance, the PDRF must complete and sign a Memorandum of Agreement (or contract/legally binding document) with the university for Enrollment as a PDRF for the current academic year and, together with the host, must also complete a Memorandum of Understanding, which outlines the general conditions of the award and the research to be undertaken. Upon completion, both documents must be sent to the PDRF Co-ordinator and copies of these completed documents should be retained on file by the academic host.

Completion of the above-mentioned documentation must be followed by an enrollment process at the University whereby the PDRF will enroll as a PDRF.

## **7. Payment procedure**

### **7.1 Requests for payment**

Payments to PDRFs will be made only if completed Request for Payment forms are received by the PDRF Co-ordinator. The host academic is responsible for ensuring that the information supplied is complete and correct and that there are sufficient funds in the designated cost entity/centre to cover the requested payment/s.

### **7.2 Frequency of payments**

Payments are made by means of the Student Fees procedures/department, into PDRFs South African bank accounts, on the dates indicated on the Request for Payment form.

### 7.3 Restrictions on the period of payment

Payments to PDRFs are restricted to three-monthly advances (in the case of University sources i.e. a University research Sub-Committee) and six-monthly advances (where external funding is paid to the University bi-annually). No single annual payments may be made to PDRFs as this may create problems should the PDRF terminate prematurely.

### 7.4 Extra amounts

Amounts that exceed the amount stipulated in the Letter of Award should not be in contravention of any specific bursary award conditions (as stipulated, for example, in a NRF bursary award, or any bursary award conditions as stipulated in the University's policies) or in the conditions as set out in paragraph 7.5 below.

7.4.1 Any ad hoc ("top up") amounts that are not specified in the Letter of Award or similar updated document (see paragraph 7.4.2 below) are taxable and must be paid via the Sundry Payment system, and not via the PDRF Co-ordinator and the bursary system.

7.4.2 Payment requests to increase the initial PDRF bursary award amount (which is reflected in the Letter of Award) must be permitted by the specific bursary award conditions and must be accompanied by a formal letter from the host academic of the department hosting the PDRF specifying the amendment of the bursary amount.

The PDRFs are personally responsible for ensuring that they do not violate their bursary or visa conditions with regard to additional funding, and the Division of Research of the University is obliged to report any such contraventions to the relevant funding organisations (in terms of signed undertakings).

### 7.5 Remuneration for additional work

7.5.1 The express purpose of PDRFs is to enable the PDRF to engage in a period of uninterrupted research. As bursary recipients, PDRFs may therefore not do any additional work related to their research in return for payment e.g. contract research. However, certain bursary schemes make provision for PDRFs to do additional unrelated work.

7.5.2 Where extra work is permitted in terms of the bursary scheme (e.g. the NRF) up to 12 hours weekly of additional paid work may be

undertaken. This is to be paid for at the University rate for casual work for workers with a PhD (please consult the Human Resources Department for current rate) and must not be paid by means of the PDRF bursary system but must be paid via the salary system. These payments are taxable in accordance with the prevailing tax legislation.

7.5.3 PDRFs may not be obliged to give lectures to students. Should they wish to lecture briefly to gain experience, this should be on a voluntary basis up to a maximum of 12 hours per week (e.g. as part of the additional work for which they may be remunerated as in described in paragraph 7.5.2 above) but this should in no way constitute part of the basic teaching provisioning of a department.

## 7.6 Progress reports

Requests to the PDRF co-ordinator by PDRFs for the second payments of the PDRF award and each subsequent three/six-month period payment must be accompanied by a brief progress report from the host academic. This report serves a dual function, namely it provides a record of research done and provides the host academic/the University with a status quo of research undertaken as part of PDRFs. These reports are further required annually for the continuation of external funding to the University. PDRFs are encouraged to expeditiously publish their research findings.

## **8. Extension of PDRFs awards for a third, fourth and fifth year**

Should funding be available and should the host academic deem this to be desirable for the University, a PDRF may be extended for:

- a third year at the request of the host academic. In this instance the host academic must send a letter requesting this extension to the PDRF Co-ordinator, who in turn will draft a new Letter of Award to formally extend the term and will follow the formal process of award and acceptance of a PDRF as set out above in paragraphs 5 and 6;
- a fourth and fifth year at the request of the host academic, subject to the written approval of the Vice-Rector Research. In this instance the host should write a letter of motivation to the Vice-Rector Research, which will be submitted to the Vice-Rector Research by means of the office of the PDRF Co-ordinator before the end of the third year of the PDRF. If

approved by the Vice-Rector Research, the PDRF Co-ordinator will draft a new Letter of Award to formally extend the term and will follow the formal process of award and acceptance of a PDRF as set out above in paragraphs 5 and 6; and

- If the PDRF is regarded as an employee by virtue of performing additional work as described in paragraph 7.5 above, the PDRF will be required to sign a declaration which provides that they will have to repay any award amount received should they fail to complete their fellowship for any reason other than death, ill-health or injury.