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Facts

A company has set up a Retirement Fund having as objective the provision of retirement, withdrawal, death and disablement benefits for the beneficiaries. The Fund has been duly registered with the Registrar of Associations under the Employees Superannuation Fund Act.

Usually a superannuation fund has to be approved by this Office to benefit from certain provisions of the Income Tax Act viz:

a) Lump sum received by an employee as commutation of pension and paid from an approved superannuation fund is exempt from tax (Item 6 of Part II of the Second Schedule to the Income Tax Act).
b) The income of an approved superannuation fund is exempt from tax (Item 21 of Part I of the Second Schedule to the Income Tax Act).The Fund has not applied to this Office for approval since some specific features of the Fund do not meet the requirements of Regulation 5 of the Income Tax Act.

Points at issue

a) That the benefit payable from the Fund upon reaching the appropriate retiring age will qualify for the exemption under Item 5 of Part II of the Second Schedule to the Income Tax Act provided that all conditions therein described are satisfied.
b) That any income paid into the Fund will be, exempt from all taxes as provided for under Section 18(1) of the Employees Superannuation Fund Act.

Ruling (issued in March 2006)

a) The benefit payable from the Fund upon reaching the appropriate retiring age, as defined under Section 23 (3) of the Income Tax Act, will qualify for the exemption under Item 5 of Part II of the Second Schedule to the Income Tax Act, provided that all conditions specified in Item 5 mentioned above as well as under Regulation 3(1) of the Income Tax Regulations are satisfied.
b) Income paid into the Fund will be exempt from income tax as provided for under Section 18(1) of the Employees Superannuation Fund Act.