

BINDING PRIVATE RULING: BPR 352

DATE: 10 September 2020

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 8C AND PARAGRAPH 58 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : TAXATION OF EMPLOYEES PARTICIPATING IN AN OPTION PROGRAMME

Preamble

This binding private ruling is published with the consent of the applicant(s) to which it has been issued. It is binding between SARS and the applicant and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax consequences relating to the exercise of share options acquired by an employee under an incentive scheme.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 28 July 2020. 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 –

- section 1(1) – definition of “gross income”;
- section 8C; and
- paragraph 58.

3. Parties to the proposed transaction

The applicant: A resident individual

The co-applicant: A resident individual

Company A: A company incorporated in a foreign country and listed on the New York Stock Exchange, a limited partner of and the general partner of partnership B

Partnership B: A limited partnership incorporated under the laws of the same foreign country as company A

4. Description of the proposed transaction

The applicant and co-applicant are employed by a company that is part of an African e-commerce group. The applicant and co-applicant rendered their services in South Africa.

Company A introduced an incentive scheme for eligible employees within its group that included the applicant and the co-applicant. In terms of the incentive scheme, the eligible employees would be offered, for no consideration, a series of call options by the general partner of partnership B. The call options would, once exercisable, entitle participants to acquire shares in company A. The call options may also be cash settled at the discretion of the grantor.

5. Conditions and assumptions

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

6. Ruling

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

- a) Section 8C will apply to the call options, but not the call option shares.
- b) The value of the call option shares will, on a purposive interpretation of paragraph (c) of the definition of "gross income" in section 1(1) and section 8C, not constitute gross income in the hands of the applicant and co-applicant.
- c) Any capital gain or loss on the exercise of the call options will be disregarded under paragraph 58, unless realised as the result of the cash settlement of the option.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from the date of the ruling.