

BINDING PRIVATE RULING: BPR 357

DATE: 15 March 2021

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 56(1)(g)(iii)
SUBJECT : DONATIONS TO A FOREIGN TRUST OF PROPERTY SITUATED OUTSIDE THE REPUBLIC

Preamble

This binding private ruling is published with the consent of the applicant(s) to whom 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 of the donation by resident natural persons to a foreign trust of property situated outside the Republic originally acquired by donation from a foreign person.

2. Relevant tax laws

In this ruling references to sections are to sections of the Act applicable as at 25 November 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 56(1)(g)(iii).

3. Parties to the proposed transaction

The applicant: A resident natural person married in community of property to the co-applicant

The co-applicant: A resident natural person married in community of property to the applicant

Trust A: A foreign discretionary trust settled by the applicant of which the applicants, amongst others, are beneficiaries

Trust B: A foreign discretionary trust settled by the applicant of which the applicants and their three children are the beneficiaries

4. Description of the proposed transaction

The applicant and co-applicant together with some of the applicant's siblings, who have never been residents of South Africa, entered into an agreement with a foreign seller for the purchase of all the shares of two foreign companies each holding a number of shares in a third foreign company.

The purchase was finalised in November 2009, with the price payable in instalments from December 2013. Over the years the applicants received distributions from Trust A that were used to partially settle the applicants' share of the purchase price. Trust A was funded by shares donated by the applicant. The shares were a gift from the applicant's parents who have never been residents of South Africa.

Disputes arose between the siblings who had been part of the share purchase transaction and those who were not. The disputes resulted in legal proceedings, but following extensive negotiations a settlement was reached between the parties that will be made an order of the relevant foreign court. The settlement includes what is termed a "partial liquidation" of the two foreign companies acquired in November 2009. As a result, the applicants will receive cash as well as shares in the third foreign company. The cash will be deposited into the foreign bank account(s) of the applicants.

The applicants will dispose of the cash as well as the shares in the third foreign company to a fourth foreign company on loan account, and then donate their loan accounts to Trust B.

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) The donation by the applicant and the co-applicant, jointly, to Trust B will be exempt from donations tax under section 56(1)(g)(iii).

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the year of assessment ending 28 February 2023.