



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 013

DATE : 6 March 2008

ACT : INCOME TAX ACT, 58 OF 1962 (“the Act”)

SECTION : SECTIONS 8A, 8C AND PARAGRAPH 11(1) OF THE EIGHTH SCHEDULE TO THE ACT

SUBJECT : SECTION 8C AND THE VARIATION OF SHARE OPTIONS OBTAINED UNDER A SHARE OPTION SCHEME

1. Summary

The issues considered in this ruling are:

- Whether the variation of rights in share options would amount to a disposal of those share options for purposes of the Eighth Schedule to the Act.
- The applicability of section 8A of the Act to the varied share options.
- The application of section 8C of the Act to new share options issued.

2. Relevant tax laws

This ruling is a binding private ruling which was requested by the Applicant in accordance with the requirements of section 76E of the Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 76Q of the Act.

All legislative references are to sections/paragraphs of the Act applicable at 4 April 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act.

Relevant provisions of the Act are –

- Section 8A;
- Section 8C; and
- Paragraph 11 of the Eighth Schedule.

3. Parties to the transaction

Applicant: A South African resident and participant in Company A's share option scheme

Company A: A South African resident company, listed on the Johannesburg Stock Exchange and a shareholder in Company B

Company B: A South African resident company, listed on the Johannesburg Stock Exchange

4. Description of the proposed transaction

During 2006, Company A and Company B made a joint announcement that Company A would be unbundling its shares held in Company B during 2007. Company A currently operates a share option scheme, in terms of the Rules of Company A's Share Option Scheme ("the SOS"). The employees of Company A and its subsidiaries participate in the scheme.

Participants in the scheme have been granted share options to buy shares in Company A at a strike price. The rules of the SOS do not currently contain provisions specifically covering unbundling events. Management of Company A has resolved that participants should be placed in a position where they are economically in the same position before and after the unbundling.

Subject to the approval of the shareholders, management has recommended that the rights of employees who participate in the SOS be varied as follows:

- Employees who hold unexercised share options should be treated similarly to shareholders of Company A.
- Employees who hold unexercised share options will be awarded share options in Company B in the same entitlement as shareholders in Company A receiving shares at the unbundling of Company B.
- This will involve a reduction in the strike price of existing Company A's share options and an issue of Company B share options to preserve the intrinsic value of the share options.

It is the intention of Company A that the only term of the share options previously granted that will be varied, is the strike price and that the remaining terms will remain the same. Those terms are set out in the SOS Rules. The share option holder retains the existing share option to acquire shares in Company A, but is required to pay a reduced price on exercise. Furthermore, the new Company B share options awarded on the unbundling of Company B will also be governed by the Rules of the SOS, as amended with the consent of the shareholders.

The Applicant was granted a share option during 2004 to acquire shares in Company A and it is exercisable during 2007, subject to the SOS Rules.

5. Specific conditions and assumptions

This binding private ruling is made subject to the following conditions and assumptions:

- The transaction is not in contravention of the Companies Act, No. 61 of 1973.
- The parties to Company A's share option contract do not intend to novate the share option contract but merely to amend one of the terms of the share option which remains valid.

6. Specific ruling

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

- The reduction of the strike price of Company A's share option will not be viewed as a disposal for purposes of paragraph 11(1) of the Eight Schedule.
- Section 8A will continue to apply to the share option to acquire shares in Company A.
- The variation of the share option to acquire shares in Company A will not constitute a cession or release of the share option and will not fall within section 8A(5).

7. Period for which this ruling letter is valid

This binding private ruling is valid until the year of assessment ending 29 February 2012.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**