



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 076

DATE: 03 February 2010

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)

SECTION : SECTIONS 10(1)(k)(i) AND 25B

SUBJECT : NATURE OF INCOME IN THE HANDS OF A VESTED BENEFICIARY OF A TRUST

1. Summary

This ruling deals with the question as to whether dividends, received by or accrued to a trust that vest in a vested beneficiary, will retain their nature as dividends in the hands of that beneficiary, where that beneficiary will subscribe for interest free unsecured perpetual debentures issued by the said trust.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 22 July 2008 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 10(1)(k)(i); and
- section 25B.

3. Parties to the proposed transaction

The Applicant: A collective investment scheme in securities as contemplated in the Collective Investment Schemes Control Act, No. 45 of 2002

The Trust: A trust still to be formed

4. Description of the proposed transaction

In terms of the trust deed the Applicant will be a vested beneficiary of the Trust. The Applicant will have vested rights to the income and realised gains of the Trust.

After becoming a vested beneficiary of the Trust the Applicant will subscribe for debentures issued by the Trust. The debentures will be interest free unsecured perpetual debentures issued by the Trust at their par value. The par value of the debentures is repayable to each holder on the redemption date, which date will be the earlier of the date –

- elected by the Trust;
- of winding-up of the Trust;
- of the provisional or final order of sequestration of the Trust; or
- of the termination otherwise of the Trust.

The Trust will use the capital received from the subscription to invest in a range of dividend yielding investments.

The Applicant will not receive the dividends or obtain the right to dividends as *quid pro quo* for the debentures, but pursuant to its rights as vested beneficiary of the Trust.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –

- the nature of the investments that will be made by the Trust and the nature of the income from the said investments were not evaluated;
- the amount which will be received by or which will accrue to the Trust is a dividend and no ruling or opinion is accordingly provided on the nature of the investments and the income;
- the income tax implications for the Trust in respect of the debentures have not been considered;
- no opinion or assurance is expressed on the following –
 - whether *C:SARS v Brummeria Renaissance (Pty) Ltd* (2007 SCA 99 (RSA)) will be applicable to the proposed transaction or any leg of the proposed transaction; and
 - whether any anti-avoidance provisions in the Act will be applicable to the proposed transaction or any leg of the proposed transaction.

6. Ruling

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

- All dividends which will be received by or will accrue to the Trust will vest in the Applicant as vested beneficiary of the Trust and will retain their nature as dividends in the hands of the Applicant.
- Such dividends will, subject to the requirements of section 10(1)(k)(i) being met, be exempt from income tax in the hands of the Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from 20 November 2008.

Issued by:

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