



South African Revenue Service

BINDING PRIVATE RULING: BPR 259

DATE: 18 January 2017

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 8C AND PARAGRAPHS 20(1)(h)(i), 35, 38 AND 80 OF THE EIGHTH SCHEDULE
SUBJECT : CAPITAL GAINS TAX IMPLICATIONS FOR AN EMPLOYEE SHARE TRUST

1. Summary

This ruling determines the capital gains tax consequences for an employee share trust on the vesting of the shares in the employees of a company and the companies' subsidiaries as the consequence of an employee share ownership plan (plan).

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs to the Eighth Schedule to the Act applicable as at 19 October 2016. 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 the provisions of –

- section 8C;
- paragraph 20(1)(h)(i);
- paragraph 35;
- paragraph 38; and
- paragraph 80.

3. Parties to the proposed transaction

The Applicant: A public company incorporated in and a resident of South Africa

Employer Companies: Private companies incorporated in and residents of South Africa that are subsidiaries of the Applicant

The Trust: An employee share ownership trust that is established in and a resident of South Africa

Qualifying Employees: Eligible employees of the Applicant or its subsidiaries who are residents of South Africa

4. Description of the proposed transaction

As part of its commitment to Black Economic Empowerment (BEE), the Applicant wishes to attract and retain black employees for the Applicant and its subsidiaries. Consequently, eligible employees (Qualifying Employees) will obtain equity shares in the Applicant pursuant to the implementation of the plan.

The Applicant will implement the plan for qualifying employees. The plan requires each Employer Company to identify qualifying employees and recommend to the board of directors of the Applicant (board) that such Qualifying Employees be incentivised through the plan. The board may at its discretion elect employees who were not identified by an Employer Company to participate in the plan. The Qualifying Employees will not be required to make any contributions in order to participate in the plan.

The proposed steps for implementing the plan will be as follows:

- Shares in the Applicant (group shares) will be issued by the Applicant to the Trust.
- The Employer Companies will settle the subscription consideration for the group shares issued to the Trust in cash, equal to the market value of the group shares. Alternatively, the subscription amount will be left outstanding on loan account against the relevant Employer Company.
- The Qualifying Employees will acquire participation interests in the Trust, (units), which will confer proportional vested rights to –
 - a) the Trust income over a five year period;
 - b) the underlying group shares on specified dates; and
 - c) voting rights attaching to the aggregate number of shares conferred by each unit.

Once the proposed steps with regard to the plan have been followed, ownership of the group shares will vest in each Qualifying Employee on specified dates, provided that the qualifying employee is still in the employ of the Applicant or an Employer Company.

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:

- The Trust will not realise a capital gain or loss on the disposal of the group shares when those shares vest in the Qualifying Employees.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 19 October 2016.

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SOUTH AFRICAN REVENUE SERVICE**