

BINDING PRIVATE RULING: BPR 330

DATE: 3 October 2019

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 8C AND 10(1)(k)(i) AND PARAGRAPH 1 OF THE FOURTH SCHEDULE TO THE ACT – DEFINITION OF “REMUNERATION”.
SUBJECT : DISTRIBUTIONS OF DIVIDENDS AND OTHER AMOUNTS FROM A TRUST TO BENEFICIARIES ON TERMINATION OF THEIR EMPLOYMENT

Preamble

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as 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 distributions of dividends and other amounts on the termination of employment of trust beneficiaries.

2. Relevant tax laws

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Fourth Schedule to the Act applicable as at 10 June 2019. 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) – paragraph (d)(i) of the definition of “gross income”;
- section 8C;
- section 10(1)(k)(i); and
- paragraph 1 of the Fourth Schedule to the Act – definition of “remuneration”.

3. Parties to the proposed transaction

The applicant: A resident trust
Company A: A resident company
Employees: Beneficiaries of the applicant

4. Description of the proposed transaction

The beneficiaries of the applicant are black permanent employees of company A. The object of the applicant is to invest funds from time to time and to use the fruits of these investments for the economic, health, educational and emergency benefits of the employees.

The object is also to hold and administer the trust funds, which comprise the following –

- a donation of R100;
- such other donations as may from time to time be made to the applicant;
- other assets, shareholdings or investments – movable or immovable, corporeal or incorporeal – which the trustees may acquire, but not limited to the shares;
- net revenue, not immediately required for purposes of achieving the objectives of the applicant, which may be capitalised by the trustees in their sole and unfettered discretion; and
- interest, dividends or accruals in favour of the applicant of whatsoever nature.

The trustees are empowered to apply and allocate those trust funds in their discretion for the benefit of the beneficiaries to the applicant to achieve the “objects of the applicant”, being –

- the economic empowerment of the employees;
- the improvement of the lives and standard of living of the employees;
- the educational needs of the employees and their immediate family or other dependents, as identified by the trustees from time to time;
- the initiation and development of projects to promote the employment, health, recreation, mental and spiritual welfare and general well-being of the employees;
- the provision of urgent relief and medical care to employees in times of unforeseen hardship; and
- such further purposes as the trustees in their sole and unfettered discretion may deem ancillary and supplementary to the objects detailed.

The business affairs of the applicant are managed and controlled by the trustees, who have the power to carry out the objects of the applicant and who must hold the trust funds in trust and allocate the net revenue.

The trustees are entitled to select one or more or all the employees to allocate or distribute all or a portion of the monies or assets comprising the net revenue as they, in their sole and unfettered discretion, may determine.

No employee is entitled to transfer, cede, pledge or otherwise deal with the trust funds or any interest in the applicant before the date of vesting and no employees have any claim against the applicant before the date of vesting.

The trust deed provides for the allocation of beneficial units. An employee holding

beneficial units is required to dispose of them to the applicant in the manner set out in the trust deed and is not entitled to dispose of or trade in them in any other way.

The trust deed provides for the repurchase of beneficial units. The beneficial units must promptly be repurchased by the applicant after the last day of the applicant's financial year in which the employee ceases to be an employee.

The purchase prices at which the beneficial units will be repurchased are determined by the trustees in their sole and absolute discretion, taking into account the net revenue available to repurchase the beneficial units on the relevant repurchase date.

The proposed transaction is that the applicant will, on the termination of employment of a beneficial unit holder, repurchase the unit at the date the employee ceases to be an employee. The repurchase of the beneficial units will be funded by existing funds held by the applicant and not by a specific dividend received.

In the course of the relationship between the applicant and its beneficiaries, the trustees will periodically exercise their discretion to vest certain dividends in the Employees. The distributions will be funded directly by dividends received from company A. The dividends received by the applicant will, in future, be distributed almost immediately, but not later than 30 days after their receipt.

5. Conditions and assumptions

This binding private ruling is made subject to the following additional condition and assumption:

- a) The amounts to be distributed to the employees from dividend receipts will be distributed to them within the year of assessment in which they were paid.

6. Ruling

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

- a) The amount to be received by a beneficiary of the applicant, by reason of the termination of his or her employment, will be included in his or her gross income in terms of paragraph (d) of the definition of "gross income" and be subject to employees' tax as provided for by the Fourth Schedule.
- b) All amounts to be distributed to the beneficiaries will constitute remuneration as defined and will be subject to employees' tax.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 10 June 2019.