

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 074

DATE: 29 January 2010

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

SECTION : SECTION 8C

**SUBJECT : DATE UPON WHICH SHARES VEST IN A TAXPAYER AND
RELATED INTEREST EXPENSE**

1. Summary

This ruling deals with the questions as to –

- when vesting take place for purposes of section 8C(3) of the Act; and
- whether an interest expense incurred in respect of the loan account obtained from a shares incentive trust to finance the purchase price of the shares, can be taken into account in calculating the 'gain' for purposes of section 8C(2) of the Act.

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 30 April 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 8C(2), read with section 8C(7); and
- section 8C(3).

3. Parties to the proposed transaction

The Applicant (the Trust): An employer share incentive trust

Company A: The company that proposes to set up an employee share incentive scheme

Company B: The shareholder of Company A

The Participants: The participants in the employer share incentive scheme

4. Description of the proposed transaction

Company A proposes to set up an employee share incentive scheme (the scheme) to promote the continued growth of the company by giving its employees an opportunity to acquire shares in the company. The scheme will be administered by the Trust.

The Trust will acquire shares in Company A from Company B (offer shares) and will sell those shares so purchased to the Participants in the scheme, who have accepted an offer made to them. The acquisition of the offer shares by the Trust will be financed by way of a loan to be obtained from Company A.

The Participants will finance the acquisition of their allocated offer shares by way of an interest bearing loan to be obtained from the Trust. The Trust will keep a separate loan account in respect of each Participant which will reflect the liability of that Participant to the Trust (being the purchase price of the offer shares).

Any dividends which may be received on the offer shares will be paid by the Participant to the Trust. The offer shares will be held in the name of the Trust, for and on behalf of the Participants until the loan on such offer shares is repaid.

The trustees shall have all voting rights in respect of the offer shares which are not fully paid for prior to the transfer of the offer shares to the Participants. After the loan is repaid, the offer shares (scheme shares) will be transferred to the relevant Participants.

The scheme shares are, however, to be sold back to the Trust after 60 months in terms of a call option, exercisable by the Trust.

The shares (offer and scheme shares), acquired by the Participants in the scheme, will have the following restrictions, as set out in the Trust Deed:

- No Participant shall pledge, cede, offer, sell, donate, exchange or in any other manner whatsoever dispose of any scheme shares acquired by him/her as a result of his/her participation in the scheme, without obtaining the prior written consent of the directors.
- If a Participant resigns or if his/her employment is terminated by the company before the shares are transferred to the Participant, the Participant must sell the offer shares at a price equal to the outstanding loan amount to the Trust.
- The Participants will be entitled to receive payment of the difference between the loan outstanding relating to the offer shares and the net asset value of the offer shares at the time of termination of their services

due to retirement, retrenchment, incapacity or death, prior to the offer shares being transferred to the Participant. The Trust will pay this amount to the Participant or executor of the deceased estate, if applicable, at such time as and when all the other Participants in the same tranche receive payment for their shares sold back to the Trust after 60 months.

- On termination of services, the Participant who holds scheme shares must sell the scheme shares to the Trust at the net asset value of the scheme shares.
- The trustees shall acquire all offer shares forming part of a tranche of shares from the Participants 60 months after the offer date.
- The Trust shall not dispose of any of the offer shares held by it for and on behalf of the Participants, save for the acquisition of scheme shares after 60 months, or in the event of the Trust being terminated or wound up.

5. Conditions and assumptions

This ruling is not subject to any conditions and assumptions.

6. Ruling

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

- The shares will remain a “restricted equity instrument” and will vest in the Participant for the purpose of section 8C(3) –
 - in the case of the scheme shares, immediately before the restricted equity instrument is sold back to the Trust (section 8C(3)(b)(ii)); and
 - in the case of the offer shares –
 - at the time a disposal contemplated in sections 8C(2)(a)(i) or (b)(i) occurs (section 8C(3)(b)(v)), in the event that the Participant has to sell the offer shares back to the Trust at a price equal to the outstanding loan amount;
 - immediately before the restricted equity instrument is sold back to the Trust (section 8C(3)(b)(ii)), in the event that the Trust is wound up or terminated; and
 - in all other cases, when all the restrictions which result in that equity instrument being a restricted equity instrument cease to have effect (section 8C(3)(b)(i)).
- The ‘consideration’, as defined in section 8C(7), given by a Participant in order to determine the gain to be included in the taxable income of the Participant, will only include the purchase price of the offer shares and will not include the interest expense incurred on the loan account obtained by the Participant from the Trust, to finance the purchase price of the offer shares.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from 10 July 2008.

Issued by:

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