

SOUTH AFRICAN REVENUE SERVICE

BINDING CLASS RULING: BCR 013

DATE: 03 December 2009

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

SECTION : SECTION 1, DEFINITION OF “GROSS INCOME” AND SECTIONS 10(1)(k)(i) AND 25B

SUBJECT : NATURE OF DIVIDEND INCOME WHEN DISTRIBUTED BY A DISCRETIONARY TRUST TO INCOME BENEFICIARIES BY VIRTUE OF EMPLOYMENT

1. Summary

This ruling deals with the question as to whether the distribution of dividend income received by a trust to its income beneficiaries will retain its nature in the hands of the income beneficiary having regard for the timing of the distribution and the fact that the distribution is made by virtue of the income beneficiaries' employment within a group of companies responsible for establishing the trust.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 8 January 2009 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 1, definition of “gross income”;
- section 10(1)(k)(i) ; and
- section 25B.

3. Class

The class members to whom this ruling will apply will be the income beneficiaries of a trust.

4. **Parties to the proposed transaction**

The Applicant: A holding company with its subsidiaries which forms a group of companies (the Group)

The Trust: A discretionary trust established by the Group

Income Beneficiaries: The employees within the Group on the distribution date as described in point 5 below

5. **Description of the proposed transaction**

The Trust has been established to enable the class members to participate in a broad-based socio-economic empowerment initiative of the Applicant, thereby promoting the objective of the Charter and the broad-based socio-economic empowerment objectives of the Group and the respective trade unions.

The Trust acquired a percentage of the issued share capital of the Applicant. The primary source of income of the Trust will be dividends received as a result of the shareholding in the Applicant. The Trust income will be distributed as follows –

- 30% of each dividend will be distributed in cash to the Income Beneficiaries (cash distributions);
- 30% of each dividend will be distributed to the Income Beneficiaries by making a payment, on behalf of each Income Beneficiary, directly to the pension or provident fund of which such Income Beneficiary is a member (pension or provident distributions); and
- the balance or any portion of such balance (40% of each dividend) will be distributed to the Income Beneficiaries at the discretion of the trustees for specified purposes (discretionary distributions).

The distribution date will be the date of payment of the amount to be distributed by the Trust to the Income Beneficiaries. It may fall within the same year of assessment in which dividends are received by or accrued to the Trust or in a subsequent year of assessment.

Income Beneficiaries will obtain a vesting right to the amount as distributed by the Trust to them on the distribution date. Income Beneficiaries employed for only part of a year will receive a *pro rata* distribution.

A person who is not an employee within the Group on the relevant distribution date will not be an Income Beneficiary and will not be entitled to receive any distribution.

Income Beneficiaries, regardless of their position within the Group, will be paid the same amount in respect of cash distributions and pension or provident distributions.

6. Conditions and assumptions

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

- the Income Beneficiaries must be employees within the Group on the distribution date.

7. Ruling

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

- Any distribution made by the trustees of the Trust to the Income Beneficiaries will, subject to the distribution being made within the same year of assessment in which the dividend was received by or accrued to the Trust, retain the character of a dividend in the hands of the Income Beneficiaries.
- Such distributions will, subject to them meeting the requirements of section 10(1)(k)(i), be exempt from income tax in the hands of the Income Beneficiaries.
- Any distribution made by the trustees of the Trust in a subsequent year of assessment in which the dividend was received by or accrued to the Trust will not be a dividend, but gross income, as provided for in paragraph (c) of the definition of “gross income” as contained in section 1, in the hands of the Income Beneficiaries.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five (5) years as from 7 April 2009.

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