

## **BINDING PRIVATE RULING: BPR 209**

DATE: 21 October 2015

**ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITIONS OF “DIVIDEND”, “GROSS INCOME” AND “INCOME”, 10(1)(k)(i)(ii), 64D, 64F(1)(l) AND 64G(2)(a)**  
**SUBJECT : DIVIDENDS TAX: DISTRIBUTION OF DIVIDENDS TO EMPLOYEES THROUGH A DISCRETIONARY TRUST**

### **1. Summary**

This ruling determines whether dividends tax is to be withheld from the dividends to be distributed in cash by a company to a discretionary trust, which will distribute those dividends to the beneficiaries of the trust who are employees of that company or its subsidiaries.

### **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 No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 14 September 2015. 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 1(1) – definitions of “dividend”, “gross income” and “income”;
- section 10(1)(k)(i)(ii);
- section 64D;
- section 64F(1)(l); and
- section 64G(2)(a).

### **3. Parties to the proposed transaction**

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

The Co-Applicant: A Black Economic Empowerment trust (the BEE trust) established by the Applicant and a resident of South Africa

The Beneficiaries: Any black person (including any black person who is an employee of the Applicant or its subsidiaries), or groups of black people, whether or not they are employed by the Applicant or its subsidiaries

#### **4. Description of the proposed transaction**

The Co-Applicant, being a discretionary trust, was established by the Applicant to pursue Black Economic Empowerment initiatives through the provision of financial and other assistance to the Beneficiaries. The trustees are empowered to determine in any given year of assessment who the beneficiaries will be. They are not named in the trust deed.

The trustees are black persons employed by the Applicant or any of its subsidiaries, as well as independent trustees. Trustees may be beneficiaries of the trust.

The trustees may not make any distribution to a beneficiary who is an employee unless (pursuant to a BEE initiative) its purpose is to incentivise that employee or to retain his or her services within the Applicant or its subsidiaries, provided that under no circumstances shall such distribution be made with a view to replacing, in whole or in part, normal compensation and benefits that such Beneficiary would otherwise have received in his or her capacity as an employee within the Applicant or its subsidiaries.

The Applicant intends to distribute dividends in cash to the Co-Applicant (the BEE trust), which will in turn distribute those dividends to its Beneficiaries.

#### **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:

- (a) This ruling only applies to dividends to be distributed to the following Beneficiaries –
  - (i) black employees of the Applicant or its subsidiaries; and
  - (ii) the trustees of the Co-Applicant, who are also black employees of the Applicant or its subsidiaries.
- (b) The dividends to be received by the Beneficiaries mentioned in (a) above will not be exempt from normal tax, as section 10(1)(k)(i)(ii) will apply.
- (c) The dividends to be distributed to the Beneficiaries mentioned in (a) above will be exempt from dividends tax under section 64F(1)(l).
- (d) The Applicant will therefore not be required to withhold dividends tax, as contemplated in section 64G(2)(a), from the dividends to be paid to the Beneficiaries mentioned in (a) above, provided they have submitted their declarations and written undertakings, as contemplated in section 64G(2)(a), to the Applicant.

**7. Period for which this ruling is valid**

This binding private ruling is valid for a period of 5 years from 14 September 2015.

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