

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 056

DATE: 23 October 2009

ACT : **INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
: **VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)**

SECTION : **SECTION 25B AND PARAGRAPH 80 OF THE EIGHTH SCHEDULE TO THE ACT**
: **SECTIONS 1, DEFINITION OF “VENDOR” AND 23(1) OF THE VAT ACT**

SUBJECT : **TAXABILITY OF INCOME AND CAPITAL GAINS IN THE HANDS OF VESTING BENEFICIARIES WHETHER A RESIDENT OR NOT**

1. Summary

This ruling deals with the taxability of income and capital gains in the hands of vested beneficiaries, whether a resident or not, where the income and capital gains were received by or accrued to a vesting trust,

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 and paragraphs are to sections of the relevant Acts and paragraphs of the Eighth Schedule to the Act applicable as at 31 July 2007 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in these Acts.

This ruling has been requested under the provisions of –

- section 25B of the Act;
- paragraph 80 of the Eighth Schedule;
- section 1, definition of “vendor” of the VAT Act; and
- section 23(1) of the VAT Act.

3. Parties to the proposed transaction

The Applicant:	A resident private equity fund, housed in a vesting trust, which will finance infrastructure development on the African continent
The Vesting Beneficiaries:	Investors, whether a resident or not, in whom the ownership of the trust assets are vested and all the investors will be beneficiaries and <i>vice versa</i>
The Fund Manager:	A resident company that will be managing the Applicant

4. Description of the proposed transaction

The Applicant will invest either directly in infrastructure projects or co-invest with governments or private sector companies. It will receive its income in the form of –

- dividends;
- interest;
- fee income; and
- capital receipts on the disposal of assets.

The Applicant will operate as follows:

- The Applicant, through the Fund Manager, will identify a possible project and a due diligence study will be carried out to determine the feasibility and viability of the project. The Fund Manager will submit the results of the due diligence study together with a report recommending, if relevant, to the investment committee of the Applicant to invest in the project.

The Applicant will invest in projects as follows -

- acquiring a shareholding in companies (the investee companies); and
- advancing loans to the investee companies.

If the project is approved by both the Applicant's investment committee and its Board of Trustees, the Applicant, through the Fund Manager, will issue drawdown notices to the Vesting Beneficiaries for the total amount required for the project, calling on Vesting Beneficiaries to make pro rata payments, according to their interest in the Applicant, into a Dollar bank account of the Applicant.

The commitments made by the Vesting Beneficiaries will be a donation, settlement or other disposition.

The Applicant will, through the Fund Manager, assist in the management of the investee companies and will earn dividends from its shareholding, interest from loans advanced and fees for advisory services rendered to the investee companies. The fee income from advisory services is expected to exceed R300 000 in a twelve month period.

The Vesting Beneficiaries will participate in each income stream, that is, dividends, interest, etc. on the basis of their pro rata participation ratio.

The Applicant will exit its investments by means of selling its shareholding in the investee companies and/or the investee companies listing on the stock exchange and/or the investee company repaying all the loans received from the Applicant.

5. Conditions and assumptions

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

- the proposed transaction, in its entirety, will not be part of or connected to any other transaction, operation or scheme;
- in the case of the Applicant, the Vesting Beneficiaries will have a pro rata right in all the underlying assets of the Applicant, therefore, the income and capital to which the Vesting Beneficiary has a vested right will be determined in accordance with the same proportion;
- the Vesting Beneficiaries will participate in the underlying income on the basis of the nature of the underlying assets in which the relevant Vesting Beneficiary has a vested right, for example, a Vesting Beneficiary who has vested rights in shares will only participate in dividends and not in other income; and
- the Applicant will not be obliged to register as a collective investment scheme as provided for in the Collective Investment Schemes Control Act, 2002.

6. Ruling

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

Income Tax

- Under section 25B, any income received by or accrued as a result of any investments made by the Applicant will be subject to income tax in the hands of the Vesting Beneficiaries.
- Where the Vesting Beneficiaries have vested rights in the income and the capital of the Applicant (per the trust deed), they will themselves be liable for any capital gains tax that arises on the disposal of any of the assets administered by the Applicant. The provisions of paragraph 80 of the Eighth Schedule will not be applicable to any capital gain

realised on the disposal of any of the assets as the assets would have vested in the Vested Beneficiaries on the date that the assets were acquired by the Applicant.

Value-Added Tax

- The Applicant will be required to register under section 23(1) of the VAT Act as a “vendor” as defined in section 1 of the VAT Act.
- The Applicant will be required to apportion the VAT incurred on expenses in accordance with a method approved by the Commissioner.

7. Period for which this ruling is valid

This binding private ruling, issued in August 2007, is valid for a period of fifteen (15) years as from the date of this ruling. The period of this ruling is subject to the proviso that a declaration, stating that the facts are still the same, is submitted every five (5) years.

Issued by:

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