

BINDING CLASS RULING: BCR 021

DATE: 23 July 2010

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

SECTION : SECTION 8C

SUBJECT : SHARES IN A PARTICULAR SHARE OPTION SCHEME TO BE RENDERED RESTRICTED EQUITY INSTRUMENTS AND THE DATE ON WHICH THOSE SHARES VEST IN A TAXPAYER

1. Summary

This ruling deals with the question as to whether shares, having regard to the pertinent provisions of a particular employee share option scheme, are restricted equity instruments as well as the date on which those shares vest in a taxpayer.

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 25 March 2010 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.

3. Class members

The Class members to whom this ruling will apply will be the Participants as described in point 4 below.

4. Parties to the proposed transaction

The Applicant: A private company that is a “resident” as defined in section 1

The Participants: Qualifying employees or directors, or both, of the Applicant and its subsidiaries

5. Description of the proposed transaction

The Applicant intends to create an employee share option scheme to attract, retain, motivate and reward the Participants, who are perceived to be able to influence the performance of the Applicant and its subsidiaries (the group) positively, if they should become shareholders of the Applicant.

5.1 Under the proposed scheme rules (the rules) an offer will be made by the Applicant to the Participants, in terms of which ordinary shares (the shares) with a par value of R1.00 each in the share capital of the Applicant will be sold to the Participants at par value.

5.2 The sale of the shares to the Participants will be subject to the following terms –

- the effective date of the sale will be the purchase date;
- the shares will be transferred to each Participant within five (5) business days after acceptance of the offer in writing by the Participant;
- the purchase price of the shares will be equal to their par value; and
- the purchase price of the shares will be paid for by a Participant –
 - within three months after the payment made by the Applicant of any cash distribution equivalent to at least 40% of its market value to its ordinary shareholders and notification is given by the Applicant to the Participants that the outstanding subscription price is due and payable;
 - within twenty four months after the listing of the Applicant on any Securities Exchange (the Liquidity Event); or
 - within one month after a Participant has sold his or her shares.

5.3 A Participant will be entitled to the full benefits associated with the ownership of the shares, including all dividends declared and paid by the Applicant and all other distributions or corporate actions in relation to the shares, which will be held in escrow and accrued interest thereon until the periods mentioned in paragraphs 5.5 and 5.6 below (the relevant periods).

5.4 The proposed rules distinguish between “fault termination” and “no fault termination”. No fault termination means the termination of employment of a Participant by reason of death, while fault termination means the termination of employment of a Participant for any other reason. Should the Participant’s services be terminated

prior to expiry of the relevant periods, the Participant is obliged to pay a penalty to the Applicant equal to a proportional percentage of the escrow funds, depending on whether or not the termination was a fault termination or no fault termination.

- 5.5 In case of a fault termination, the Applicant will have the option to purchase the shares from the Participant at par value in the following proportions –
- if fault termination occurs on or before 30 June 2011 – 100% of the shares;
 - if fault termination occurs on or before 30 June 2012 – 75% of the shares;
 - if fault termination occurs on or before 30 June 2013 – 50% of the shares; or
 - if fault termination occurs on or before 30 June 2014 – 0% of the shares.
- 5.6 In case of a no fault termination, the relevant vesting periods referred to in paragraph 5.5 above continue to apply, however, only 50% of the shares may be repurchased by the scheme administrator. For instance, if the no fault termination occurs after 30 June 2011 but on or before 30 June 2012, only 50% of the 75% of the shares shall be repurchased by the scheme administrator at par.
- 5.7 The scheme administrator will be entitled to give notice to the Participant of an intention to repurchase the shares at par value when –
- the Applicant makes a cash distribution to its ordinary shareholders equivalent to at least 40% of its market value, and the Participant does not settle the outstanding subscription price within three months after the payment of the distribution and the scheme administrator has notified the Participant that the outstanding subscription price is due and payable;
 - the outstanding subscription price has not been settled within twenty four months after the occurrence of the Liquidity Event; or
 - the outstanding subscription price has not been settled within one month after the Participant has sold the shares.
- 5.8 If the Applicant makes a cash distribution equal to 40% of the value of the shares or the shares are listed before the dates specified in paragraphs 5.5 or 5.6 above and the Participants pay the subscription price as agreed, the specified portion of the shares will still remain

restricted until such time as the dates specified in paragraphs 5.5 or 5.6 above have lapsed.

6. Conditions and assumptions

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

- The terms of any letter of allocation issued to a Participant in relation to a specific offer do not contradict or materially alter the provisions relating to the release of the shares as per the proposed rules, being the latter of the vesting date stipulated in the relevant clause of the proposed rules or the payment date of the share debt. For purposes of this condition, any extension or amendment of the release dates stipulated in the relevant clause of the proposed rules will not be regarded as a contradiction or material alteration of the proposed rules.
- An amendment of the proposed rules as provided for in clause 8 of the proposed rules that results in the waiving of any of the provisions that render a share to be a “restricted equity instrument” as defined in section 8C(7), will be a material alteration of the proposed rules and this ruling will then cease to be applicable to those shares. The vesting of those shares for purposes of section 8C in that an event will have to be determined under the provisions of section 8C and not according to this ruling.

7. Ruling

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

- The shares to be offered to the Participants in terms of the proposed employee share scheme will each remain a “restricted equity instrument” as defined in section 8C(7) until the latter of –
 - the vesting dates as stipulated in the proposed rules lapsing;
 - the date the outstanding subscription price being paid after the Applicant has effected a cash distribution to its ordinary shareholders equivalent to at least 40% of its market value and the scheme administrator has notified the Participant that the subscription price is due and payable within three months of the payment of such distribution;
 - the date the subscription price been paid within twenty four months of the occurrence of the Liquidity Event; or
 - the date the shares been sold, in which case the date of vesting for the purposes of section 8C will be immediately before the shares are disposed of, as provided for in section 8C(3)(b)(ii).

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five (5) years as from 1 March 2010.

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