BINDING PRIVATE RULING: BPR 125

DATE: 25 October 2012

ACT	**:**	**INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTIONS	**:**	**SECTIONS 10(1)(*t*)(vii), 64D, DEFINITION OF "BENEFICIAL OWNER", 64F(*g*) AND 64G(2)(*a*) AND PARAGRAPHS 63 AND 80(1) OF THE EIGHTH SCHEDULE TO THE ACT**
SUBJECT	**:**	**VESTING BY DISCRETIONARY TRUST OF DIVIDEND RIGHTS TO THE BENEFICIARY OF THE TRUST**

1. Summary

This ruling deals with–

- the capital gains tax (CGT) treatment arising from the vesting by a discretionary trust of dividend rights in its beneficiary under paragraph 80(1) of the Eighth Schedule;
- whether the capital gain arising from the vesting of the dividend rights by the trust in the beneficiary will be disregarded in the hands of the beneficiary under paragraph 63 of the Eighth Schedule as the receipts and accruals of the beneficiary are exempt from tax under section 10(1)(*t*)(vii); and
- whether the beneficiary will be the "beneficial owner" of the dividend amounts when the dividends are paid, and whether the company paying the dividend is required to withhold dividends tax from the payment of the dividend under section 64G(2)(*a*).

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 and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 28 August 2012 and 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 10(1)(*t*)(vii);

- section 64D;
- section 64F(*g*);
- section 64G(2)(*a*); and
- paragraphs 63 and 80(1) of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant:	A discretionary trust established in and a resident of South Africa
Co-Applicant A:	A private company incorporated in and a resident of South Africa and that is 100 per cent held by the Applicant
Co-Applicant B:	A community and one of the beneficiaries of the Applicant

4. Description of the proposed transaction

- The Applicant is a discretionary trust that is effectively managed in South Africa. One of the beneficiaries of the Applicant is Co-Applicant B that is recognised as a traditional community under section 2 of the Traditional Leadership and Governance Framework Act No. 41 of 2003 and is exempt from normal tax under section 10(1)(*t*)(vii).
- The Applicant holds 100 per cent of the equity shares in Co-Applicant A that in turn holds equity shares in various subsidiary companies that are incorporated and effectively managed in South Africa.
- The current practice of the trustees of the Applicant is to consider each year what the budgetary requirements of Co-Applicant B will be for the following year. The trustees will then have to exercise their discretion in favour of Co-Applicant B by vesting dividend rights in Co-Applicant B that are considered to be a sufficient amount to meet Co-Applicant B's budgetary requirements.
- It is proposed that the trustees of the Applicant will, in their discretion, distribute dividend rights held in Co-Applicant A to Co-Applicant B, in its capacity as a beneficiary of the Applicant.
- On the payment date of the dividend, Co-Applicant B will be the "beneficial owner" and will be entitled to the dividend amount.
- Co-Applicant A will pay the dividend amount to the Applicant, but Co-Applicant A will not withhold dividends tax from such payment to the Applicant to the extent that the Applicant has submitted a declaration

(and written undertaking) to Co-Applicant A indicating that the dividend amount declared is exempt from tax in the hands of Co-Applicant B.

5. Conditions and assumptions

This ruling is not subject to any additional conditions and assumptions.

6. Rulings

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

- The vesting of the dividend rights by the Applicant in Co-Applicant B will not be subject to CGT in the hands of the Applicant under paragraph 80(1) of the Eighth Schedule.
- Any capital gains arising from the vesting of the dividend rights will not give rise to any CGT liability in the hands of Co-Applicant B under paragraph 63 of the Eighth Schedule as its receipts and accruals are exempt from normal tax under section 10(1)(*t*)(vii).
- Co-Applicant A will not be required to withhold dividends tax under section 64G(2)(*a*) from the dividend amount paid to the Applicant, if the Applicant has by the date determined by Co-Applicant A, or by the date of payment of the dividend, submitted a declaration to Co-Applicant A that the dividend amount is exempt from dividends tax under section 64F(*g*) and a written undertaking in such form as is prescribed to inform Co-Applicant A should Co-Applicant B cease to be the beneficial owner of the dividend.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 28 August 2012.

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