

BINDING PRIVATE RULING: BPR 098

DATE: 24 March 2011

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : PARAGRAPH 55(1)(a)(ii) OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : CAPITAL GAIN/LOSS ON CEDED POLICIES

1. Summary

This ruling deals with the question as to whether an insurance policy to be ceded by the original beneficial owner of the policy to a family trust could be regarded as a “second-hand” policy resulting in any capital gain or loss arising from the disposal of the policy by the trust being included in the taxable income of the 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 paragraphs are to paragraphs of the Eighth Schedule of the Act applicable as at 18 October 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 paragraph 55(1)(a)(ii) of the Eighth Schedule.

3. Parties to the proposed transaction

The Applicant: An individual who is the original beneficial owner (the owner) of a life insurance policy (a policy) issued by a resident insurance company

The Trust: A family trust to be established

4. Description of the proposed transaction

The Applicant is the owner of a policy with no cash value which will only pay a lump sum benefit upon the death or disability of the insured. All premiums to date have been paid by the Applicant.

The Applicant intends to establish the Trust for his benefit and that of his spouse and their dependants, to receive the proceeds of the policy upon the death or disability of the insured, that is the Applicant and his spouse.

To give effect to this intention the Applicant will nominate the Trust as the beneficiary under the policy and donate the policy *via* a cession to the Trust. No amount will be payable by the Trust to the Applicant in respect of the cession and the Trustees will acquire full ownership and control of the policy, in order for the Trustees to deal with the policy as they see fit.

5. Conditions and assumptions

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

- the Applicant has to nominated the Trust as the beneficiary of the policy prior to ceding the policy to the Trust; and
- the Trustees did not pay and will not pay any amount, directly or indirectly, to the Applicant in respect of the cession of the policy from the Applicant to the Trust as envisaged in paragraph 55(1)(a)(ii) of the Eighth Schedule to the Act.

6. Ruling

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

- Any capital gain/loss accruing to the Trust in respect of the policy subsequent to the cession of the policy from the Applicant to the Trust may be disregarded by the Trust under paragraph 55(1)(a)(ii) of the Eighth Schedule to the Act.

7. Period for which this ruling is valid

This binding private ruling, issued in October 2010, is valid until the amount payable upon the death or disability of the insured in terms of the policy is paid to the Trust, subject to the proviso that a declaration is submitted every five (5) years stating that the facts of the transaction as set out in the application document are still the same.

Issued by:

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