

*SOUTH AFRICAN REVENUE SERVICE*

**BINDING PRIVATE RULING: BPR 014**

DATE : 6 March 2008

**ACT : INCOME TAX ACT, 58 OF 1962 (“the Act”)**  
**SECTION : PARAGRAPH 11A OF THE FOURTH SCHEDULE TO THE ACT**  
**SUBJECT : EMPLOYEES’ TAX IN RESPECT OF GAINS, AS CONTEMPLATED IN SECTIONS 8A AND 8C OF THE ACT, MADE BY RETIRED EMPLOYEES**

**1. Summary**

The issue considered in this ruling is whether employees’ tax is to be withheld in terms of paragraph 11A of the Fourth Schedule to the Act in respect of gains, made by retired employees of the Applicant, by the exercise, cession or release of any right to acquire any marketable security as contemplated in section 8A of the Act and any gain made as a result of the vesting of any equity instrument as contemplated in section 8C of the Act.

**2. Relevant tax laws**

This ruling is a binding private ruling which was requested by the Applicant in accordance with the requirements of section 76E of the Act and issued by the Legal and Policy Division: Advance Tax Rulings in accordance with section 76Q of the Act.

All legislative references are to sections of the Act and paragraphs of the Fourth Schedule applicable as at 11 January 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to it in the Act and Fourth Schedule.

The relevant provision of the Act is paragraph 11A of the Fourth Schedule.

**3. Parties to the transaction**

Applicant: A listed company registered in the Republic of South Africa

Former employee: Retired employees of the Applicant who are not (at the relevant time) employed by another employer

**4. Description of the proposed transaction**

The exercise, cession, release of any right to acquire any marketable security or vesting of any equity instrument by a former employee of the Applicant who granted the share option(s) to the former employee, who at the time of such exercise, cession, release or vesting event is not employed by the Applicant or a group company of the Applicant.

**5. Specific conditions and assumptions**

This binding private ruling is made subject to the following condition and assumption:

- The former employee must no longer be in the employ of the Applicant or a company within the Applicant's group of companies.

**6. Specific ruling**

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

- Any gain made by the exercise, cession or release of any right to acquire any marketable securities as contemplated in section 8A and any gain made as a result of the vesting of any equity instrument as contemplated in section 8C is deemed to be remuneration in terms of paragraph 11A the Fourth Schedule and is, therefore, subject to employees' tax. However, where the gain is made by the former employee while he/she is not employed by any other employer, the former employer may not deduct employees' tax but must issue an IT3 certificate to such former employee.

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

This binding private ruling, issued in January 2007, is valid until it is withdrawn or modified by the Commissioner.

Issued by:

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