

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULINGS: BPR 005

The guidance contained in this ruling is affected by subsequent law changes.

DATE : 3 September 2007

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

SECTION : **SECTION 1, DEFINITION OF “GROSS INCOME”, SECTIONS 10(1)(k)(i) AND 25B**

SUBJECT : **WHETHER DIVIDEND INCOME RECEIVED BY A TRUST RETAINS ITS NATURE IN THE HANDS OF THE BENEFICIARIES ON DISTRIBUTION THEREOF, BY THE TRUST, IN THE SAME TAX YEAR**

1. Summary

The issues considered in this ruling are –

- Whether dividend income, which is exempt income in terms of section 10(1)(k) of the Act, provided the provisions of the said section are met, distributed to the beneficiaries in the same year that it is received by the trust, retains its nature as dividend income; and
- Whether the dividend income received by the beneficiary retains its nature despite the fact that the amount so distributed is as a result of an employer employee relationship.

2. Relevant tax laws

This ruling is a binding private ruling issued in accordance with section 76Q of the Act.

All legislative references are to sections of the Act applicable as at 31 July 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to them in the Act.

Relevant provisions of the Act –

- Section 1 – definition of “gross income”;
- Section 10(1)(k)(i) – exempt dividend income – dividends; and
- Section 25B – the taxation of trusts.

3. Parties to the transaction

The Applicant: A trust established by Company A in South Africa with the objective of providing benefits to employees within the Group on a “social and compassionate needs basis”.

Company A: A company listed on the JSE.

Company B: A subsidiary of Company A.

Company C: An investment company that holds listed shares. The shareholder of the company is the Applicant.

Group: Company A, B and C.

4. Description of the proposed transaction

Company A established the Applicant to provide benefits on a “social and compassionate needs basis” to the employees within the Group.

The Applicant was established by means of a nominal donation from Company A. The beneficiaries of the Applicant will be black employees (and their immediate family members), earning income below a certain threshold, who are employed by the Group within South Africa. Distributions from the Applicant are intended to assist such persons with meeting their medical, educational or housing needs.

In terms of the trust deed a person can only qualify as a beneficiary of the Applicant if that person/employee is a low income earner and has been permanently employed by a company within the Group for at least three consecutive years, or in the case of a temporary staff member, three cumulative years, without a break in service in excess of 12 months.

In terms of the trust deed, a qualifying employee can be appointed as beneficiary of the Applicant in the following manner –

- The board of directors of Company B can recommend that certain qualifying employees be appointed as beneficiaries of the Applicant, and can recommend the amount of benefits to be vested in, or paid to them (as stipulated); or
- The qualifying employees can, with prior written approval from Company B, apply for benefits by providing a written application to the trustees motivating their need.

All decisions as to which qualifying employees will receive a distribution from the trustees (whether recommended or on application) and the amount of the distribution, will be made by Company B.

The trust deed provides that the board of directors of Company A shall decide what will constitute a “Qualifying Need” and the trustees shall notify the beneficiaries accordingly. Upon the establishment of the Applicant a “Qualifying Need” was defined as “any social and compassionate need related to education, housing and medical requirements in respect of a Qualifying Employee”.

The trust deed provides that a beneficiary will be notified in writing of his appointment as a beneficiary and the amount of the benefit vested in him.

The trust deed provides that the trustees shall use any dividend and distributions received to pay the benefits in cash and have the discretion to elect to vest the dividends in respect of the Company C shares directly in that beneficiary.

The Applicant’s main source of income will be dividends distributed by Company C.

5. Specific conditions and assumptions

This binding private ruling is made subject to the following conditions –

- That dividends received by the Applicant would only be distributed to qualifying employees; and
- That the qualifying employees would be employees who are low income earners in respect of which a “social and compassionate need” related to education, housing and medical have been identified.

6. Specific ruling

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

- In terms of section 25B the dividends received during the year of assessment, which are distributed to qualifying beneficiaries within the same year of assessment will be deemed to be dividends accruing to the beneficiaries; and
- Dividends distributed as contemplated in the paragraph above will be exempt in terms of section 10(1)(k)(i) provided the conditions of the said section are met.

7. Period for which this ruling letter is valid

This binding private ruling is valid for a period of five (5) years as from 22 May 2007.

Issued by:

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