

BINDING PRIVATE RULING: BPR 129

DATE: 10 December 2012

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 64D, DEFINITION OF “BENEFICIAL OWNER” AND 64F(a)
SUBJECT : BENEFICIAL OWNER OF DIVIDENDS

1. Summary

This ruling deals with the exemption from dividends tax of dividends received by a company, as a result of being the beneficial owner thereof, that were paid in respect of that company's own shares.

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 are to sections of the Act applicable as at 1 April 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 64D, definition of “beneficial owner”; and
- section 64F(a).

3. Parties to the proposed transaction

The Applicant: A public company incorporated in and a resident of South Africa

Share Trusts: Five separate trusts established by the Applicant, each of which is a resident of South Africa

4. Description of the proposed transaction

The Applicant has five existing share incentive schemes for its different categories of employees. The terms of each scheme is embodied in a trust deed that establishes a separate share trust. A set of scheme rules governs the operation of each particular share incentive scheme.

Share Trust 1 was established for the lowest paid staff. The Applicant awards a cash grant to the trust which uses the cash grant to acquire the Applicant's shares through a fresh issue or an open market purchase. The trustees vest these shares

in qualifying employees, subject to a resolute condition that they remain employed by the Applicant until their death, retirement, retrenchment or the sale of the division in which they are employed. In such an event the trustees will repurchase their entitlements to future benefits for a nominal amount, unless the trustees waive the right to do so. Dividends on vested shares may accrue and be paid by the trust immediately after a qualifying employee joins the scheme. Employees have full voting rights in respect of shares allocated to them.

Share Trust 2 is primarily for the benefit of staff who earn in excess of a specified monthly amount. The Applicant also funds this trust to acquire shares in the Applicant. Share options are granted to qualifying employees to acquire shares at an option strike price on specified dates and at specified intervals, failing which the options will be forfeited.

Share Trust 3 benefits senior management. It operates in a manner identical to Share Trust 2, except that the option strike price is subject to a discount, determined by divisional performance, on the vesting date and different intervals apply to the vesting of share options.

Share Trust 4 benefits executive management. It operates in a manner identical to Share Trusts 2 and 3, except that discounts to the option strike price are determined by headline earnings per share performance on the vesting date and different intervals apply to the vesting of share options.

Share Trust 5 benefits the Applicant's executive directors. It operates in a manner identical to Share Trusts 2, 3 and 4, except that different intervals apply to the vesting of share options and no discount applies to the option strike price.

Each Share Trust invariably holds shares that have not been allocated to any staff beneficiary, either because a beneficiary has left the Applicant's employ in circumstances that required Share Trust 1 to repurchase the shares, or because a beneficiary of any of the other Share Trusts failed to exercise their share options, or because shares have been acquired by a Share Trust and the trustees of that trust have not yet allocated the shares or awarded options to purchase them, as the case may be.

The Applicant is a beneficiary of all five Share Trusts.

From time to time the Applicant will pay dividends via a regulated intermediary, as defined in section 64D, to its shareholders, which will include the five Share Trusts that have each acquired shares in the Applicant.

The trustees of each Share Trust will, on a date which precedes the last date to trade in the Applicant's shares for the relevant dividend, resolve to allocate the dividends received on unallocated shares to the Applicant as trust beneficiary.

5. Conditions and assumptions

This ruling is made subject to the additional condition and assumption that the Applicant must pay over the dividends in respect of unallocated shares to the regulated intermediary.

6. Ruling

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

- The Applicant will be the beneficial owner of the dividends paid in respect of unallocated shares if these dividends are, after their declaration date and prior to the last date to trade in the relevant shares, allocated to the Applicant by the trustees of the five Share Trusts.
- These dividends will be exempt from dividends tax in the hands of the Applicant under section 64F(a).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 1 April 2012.

Issued by:

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