SOUTH AFRICAN REVENUE SERVICE

BINDING CLASS RULING: BCR 012

DATE: 27 October 2009

ACT	**:**	**INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTION	**:**	**SECTIONS 8C, 6*quat* AND 7(1)**
SUBJECT	**:**	**INCOME TAX IMPLICATIONS ATTENDANT UPON THE VESTING OF AN “EQUITY INSTRUMENT” LISTED ON A FOREIGN STOCK EXCHANGE**

1. Summary

This ruling deals with the income tax implications attendant upon the vesting of a restricted equity instrument as envisaged in section 8C of the Act and relief from double taxation in the hands of the recipient.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 76R of the Act.

In this ruling legislative references to sections and schedules are to sections of and schedules to the Act applicable as at 8 January 2009 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 –

- section 8C;
- section 6*quat;* and
- section 7(1).

3. Class

The class members to whom this ruling will apply will be the Employees as described in point 4 below.

4. Parties to the proposed transaction

The Applicant:	A multinational company carrying on business in South Africa

The Employees: Employees, who are "resident" as defined in section 1, of the Applicant and subsidiaries, who also qualify to participate in the proposed transaction and subscribe for the equity interest offered by the Applicant

5. Description of the proposed transaction

The Applicant is considering offering its global employees an opportunity to acquire an equity interest in the company through the acquisition of its existing (treasury) shares. The salient features of the proposed transaction will be as follows:

- Only employees who will have been in the employ of the Applicant for a period of at least three (3) months after the end of the subscription period for the offer to be made will qualify to participate in the proposed transaction.
- The subscription period will be a 10-day period. Employees will be restricted to purchase only a certain number of shares within a specified limited amount at the close of business on the day before the determination of the purchase price.
- The purchase price will be computed with reference to the average of the opening and closing market price of the Applicant's shares on a foreign Stock Exchange on the day before the opening date of the subscription period.
- The purchase price (converted into Rand at the exchange rate applicable at the close of business on the day before the determination of the purchase price) will be payable in Rand.
- The purchased shares will be subject to a three (3) year lock-up period, ending on the date of the third (3) anniversary of the designated settlement date. The Employees will not be entitled to transfer, assign, pledge, sell, exchange or encumber the shares during the lock-up period, except under the following circumstances, which would constitute an early exit event –
  - permanent disability of the Employee;
  - termination of the Employee's employment (under any circumstance, whether voluntary or involuntary); or
  - death of the Employee.
- On the settlement date and subject to payment of the purchase price, the share/s will be delivered and deposited by the Applicant in a securities account maintained by a financial institution acting as a custodian (the Custodian). The shares will be recorded in the Applicant's books and records in the name of the Custodian. The Custodian, on the other hand, will credit the shares in its records in the name of each Employee in proportion to the number of shares purchased by that Employee.

- Upon the payment for the shares and delivery of the shares to the securities account, the Employee, subject to the lock-up period, will have all the rights of a shareholder with respect to the purchased shares, that is, rights to dividends once such dividends are declared and the right to vote in general shareholders' meetings.
- The dividend to be paid quarterly on the shares held in the securities account by the Applicant less withholding tax will be paid to the Custodian and deposited into a separate foreign interest-earning account opened for that purpose. This dividend plus interest will be paid to the Employee at the end of the lock-up period or upon occurrence of an early exit event, whichever occurs first. Payment will be in Rand.
- The Custodian will provide the Employees with annual statements indicating the amount of dividends earned by the Employee on his or her shares, net of any applicable withholding tax levied at the time of payment to the Custodian, together with the interest rate applied for the relevant period (interest rate to be determined by the Custodian).
- Three (3) months before the expiry of the lock-up period, the Custodian will distribute to the Employees a termination notice, requesting the Employees to elect one of the following options in respect of the shares held by the Custodian on their behalf –
  - to sell their shares; or
  - to keep their shares, in which case they will have to indicate their securities account to which the shares will be transferred.

  If no election is made, the shares will automatically be sold by the Custodian.
- However, upon the occurrence of an early exit event, the Employee will be permitted but not required to deliver to the Custodian a notice requesting the delivery of the shares or the sale of the shares. Any dividends plus interest accrued will also be paid to the Employee in Rand at the end of the lock-up period or upon occurrence of an early exit event if he or she decides to exit from the transaction.
- If the Employee elects to sell his or her shares, the Custodian will sell the shares on a foreign open market. The Custodian will allocate the global net cash proceeds among the Employees in proportion to the number of shares owned by each Employee. The sale proceeds will be received in Rand based on the prevailing exchange rate at the time.

6. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that the proposed transaction will be implemented in accordance with the rules contained in the Employee Share Purchase Plan Rules as presented with the ruling application.

7. Ruling

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

- The proposed purchase of shares by the Employees will be dealt with under section 8C. The Employee will have to include in or deduct from his or her income any gains or losses realised on the vesting of the said shares in the year of assessment in which the shares vest as contemplated in section 8C.
- The net dividends payable by the Applicant to the Custodian plus interest thereon in the foreign interest-earning account will be deemed to accrue annually to the Employee. Therefore, even though the dividends and interest will not be payable until the expiry of the lock-up period or at the occurrence of an early exit event, such dividends and interest will remain due and payable to the Employee, as contemplated in section 7(1).
- The Employees will be entitled to relief from double taxation, in respect of any withholding tax levied on the dividends by a foreign country, as contemplated under section 6*quat*.
- This ruling does not apply to foreign currency gains or losses as contemplated in section 24I or Part XIII of the Eighth Schedule.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of three (3) years as from 14 October 2008.

Issued by:

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