BINDING CLASS RULING: BCR 022

DATE: 27 July 2010

ACT	**:**	**INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
SECTION	**:**	**SECTION 1, DEFINITION OF “COMPANY” AND SECTION 9D**
SUBJECT	**:**	**POTENTIAL DOUBLE TAXATION OF PROFITS ATTRIBUTABLE TO PROTECTED CELL COMPANIES**

1. Summary

This ruling deals with the question as to whether the potential attribution of the profits of a foreign Protected Cell Company (a foreign PCC) could result in the double taxation of these profits as a result of the application of the provisions contained in the Act, on the basis that each entity (the foreign PCC and each Cell in the foreign PCC), is potentially a “company” as defined in section 1 of the Act.

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 are to sections of the Act applicable as at 26 February 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 –

- section 1, the definition of “company”; and
- section 9D.

3. Class

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

4. Parties to the proposed transaction

The Applicant:	A private company that is a “resident” as defined in section 1

Company X:	A PCC that is resident in Mauritius and will be listed on the Stock Exchange of Mauritius
The Class members:	Investors (individuals, trusts, pension funds and other institutions) in Company X, all “resident” as defined in section1

5. Description of the proposed transaction

The Applicant intends to facilitate investments to be made in a foreign PCC (Company X) by the Class members as well as investors who are not resident in South Africa. A PCC is a corporate structure that consists of several Cells within the same legal entity. The Cells function as independent units under the umbrella of the PCC, whereby each Cell has its own assets, liabilities, cellular capital and accounts. The PCC consists of Cell and Core shares, whereby the investors will subscribe for Cell shares and the administrators for Core shares.

The Applicant will facilitate the investments made by the Class members either directly by way of the foreign investment allowance or indirectly by way of asset swap mechanisms.

Company X will be effectively managed in Mauritius. Management and investment decisions will be made outside South Africa.

The Applicant will act as an Investment Advisor and Broker to Company X, but will not have the authority to contract on behalf of Company X, even though it may undertake marketing for Company X.

Any decisions regarding the acceptance or withdrawal of investments will be made by the board of Company X (the Board), although such recommendations may be made by the Applicant.

Company X will appoint an unrelated company, Company A, which will be resident in Mauritius, as its Administrator. Company A will subscribe for Core shares.

The Board will initially comprise of six (6) members, two (2) of whom will be resident in South Africa and the remaining four (4) members will be resident in Mauritius. These four (4) members will comprise of one (1) independent director and three (3) employees of Company A.

Company X will appoint Q Bank as a Custodian to take deposits and provide investment services. Q Bank is an authorised Financial Services Provider in South Africa.

Q Bank will, as a result, subscribe for Cell shares in the first Cell in Company X.

An investment committee will meet regularly in Mauritius to consider and approve or reject the recommendations made by an Independent Investment Advisor and the Applicant. The Board will meet regularly to oversee and review the reports from Q Bank and Company A, as well as to take all such decisions necessary for the management of Company X. The investment committee will be established by the Board.

The Applicant will facilitate investments as follows:

- Company X will make investment opportunities available by creating Cells within it by issuing Cell shares. Each Cell will have different investment strategies and/or risk profiles.
- The Applicant will facilitate investments to be made by investors that will be subject to the South African Exchange Control Regulations, by making available its asset swap capacity to them. Other investors that are not resident in South Africa as well as those who are resident in South Africa within the limitations imposed by their foreign investment allowance, will also participate.
- One or more investors will subscribe for Cell shares against payment of cash. Cell shares will be created and issued by Company X in respect of a particular Cell.
- The participation of Cell shareholders will be restricted to the particular Cells in which they hold Cell shares and the holders of the Core shares will not participate in the Cellular Assets.
- The cash paid for Cell shares will be used primarily to invest in foreign immovable property.

Investors will realise their investments as follows –

- an investor will request a redemption of the Cell shares in writing;
- the net asset value will be determined by the Board. The net asset value will be divided by the number of Cell shares in issue for that Cell. The value so determined will be reduced by any exit charges considered appropriate by the Board; and
- the Cell shares will be redeemed accordingly.

The Cells to be created by Company X will not constitute separate legal entities. Company X will be the only legal entity.

Investors will only invest by way of subscribing for Cell shares.

6. Conditions and assumptions

This ruling is not subject to any conditions and assumption.

7. Ruling

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

7.1 Company X, as well as the individual Cells, will fall within the ambit of the definition of a "company" in section 1.

7.2 The investors that are resident in South Africa will, therefore, hold participation rights in a "foreign company", as contemplated in section 9D(1). The profits of the respective Cells will, accordingly, be attributed to the investors who are resident in South Africa.

7.2 The provisions of section 9D will also apply to Company X if the required shareholding of resident investors is met. Attribution as ruled in paragraphs 7.1 and 7.2 above will, however, take preference over the general attribution rule. The same income will therefore not be subject to tax more than once.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of five (5) years as from 5 March 2010.

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