

SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 019

The guidance contained in this ruling is affected by subsequent law changes and policy guidance on the subject provided in Comprehensive guide to capital gains tax (issue 5)

DATE : 14 July 2008

ACT : INCOME TAX ACT, 58 OF 1962 ("the Act")

SECTION : PARAGRAPH 11 OF THE EIGHTH SCHEDULE TO THE ACT

SUBJECT : RECEIPT OF A CASH PAYMENT FROM A TRUST – DISPOSAL OF VESTED RIGHTS BY THE BENEFICIARY FOR CAPITAL GAINS TAX (CGT) PURPOSES

1. Summary

The main issue considered in this ruling is whether a beneficiary who has a vested right to the capital in relation to the trust property, and who enters into an agreement in terms of which a cash payment is received from the trustees of the said trust, will have a disposal of his or her interest in the trust property for CGT purposes.

An attendant issue dealt with in the ruling relates to the payment of the cash amount by the trustees to the beneficiary and determines that such payment is governed by the provisions of paragraph 11(2)(e) of the Eighth Schedule to the Act.

2. Relevant tax laws

This ruling is a binding private ruling 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 Eighth Schedule to the Act, applicable as at 16 November 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to them in the Act.

The relevant provisions of the Act are paragraph 11(1)(a) and (2)(e).

3. Parties to the transaction

Applicant: The trustees of a resident trust established by means of the last will and testament of the testator for the benefit of his surviving spouse and three sons prior to 1 October 2001

Co-Applicant: One of the capital beneficiaries wishing to liquidate his interest in the trust

Capital Beneficiaries: The testator's three adult sons

4. Description of the proposed transaction

The resident trust is a testamentary trust that came into existence upon the death of the testator during the early 1980's. The trust property comprises a couple of farms, farming equipment, livestock, a tractor, a truck and a bakkie.

Addendum A to the last will and testament of the testator regulates the trust and provided as follows with regard to the income and capital of the trust:

- With regard to trust income, the trustees will on a yearly basis apply the trust income on an equal basis for the mutual benefit of the surviving spouse and beneficiaries for a period of three (3) years. The determination of the trust income to be distributed on a yearly basis falls within the discretion of the trustees.
- With regard to the trust property, the trust will dissolve three (3) years after the date of the testator's death on which date each of the beneficiaries will be entitled to an equal share in the trust property and undistributed trust income.

The trustees directed that the trust continues in force after the expiration of the initial three (3) year period.

The testator's three sons are income beneficiaries and the only Capital Beneficiaries of the trust as well as the trustees of the trust. One of the Capital Beneficiaries, the Co-Applicant, has indicated that he would like to receive his third portion of the trust property.

To this end, it is proposed that the trust makes a cash payment to the Co-Applicant of an amount equal to the market value of his vested right in a third portion of the trust property. The trustees will obtain a loan in order to make the payment to the Co-Applicant which payment will result in him no longer having any rights or entitlements in relation to the trust property.\

5. Specific condition and assumption

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

- The Capital Beneficiaries have vested rights to the trust property.

6. Specific ruling

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

- The payment of the cash amount by the trustees to the Co-Applicant results in a disposal by the Co-Applicant of his vested right in the assets of the trust in terms of paragraph 11(1)(a).
- That payment of the cash amount by the trustees to the Co-Applicant falls within the ambit of paragraph 11(2)(e) and hence, the trust will not have a disposal in relation to the proposed transaction.

7. Period for which this ruling letter is valid

This binding private ruling, issued in November 2007, will be valid for the year of assessment during which the Co-Applicant disposes of his vested right in the property of the trust.

Issued by:

Legal and Policy Division: Advance Tax Rulings
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