BINDING CLASS RULING: BCR 058

DATE: 6 September 2017

ACT	**:**	**INCOME TAX ACT 58 OF 1962 (the Act)**
SECTION	**:**	**SECTION 8C**
SUBJECT	**:**	**CONSEQUENCES FOR BENEFICIARIES ON THE UNWINDING OF AN EMPLOYEE SHARE INCENTIVE SCHEME**

1. Summary

This ruling determines the income tax consequences for the beneficiaries on the unwinding of an employee share incentive scheme.

2. Relevant tax laws

This is a binding class ruling issued in accordance with section 78(2) and published in accordance with section 87(2) of the Tax Administration Act 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 10 July 2017. 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 section 8C.

3. Class

The class members to whom this ruling will apply are the beneficiaries of the trust referred to in **4**.

4. Parties to the proposed transaction

The applicant:	A JSE listed company incorporated in and a resident of South Africa
The trust:	An employee share incentive trust founded by the applicant for the benefit of qualifying employees of companies in the group of which the applicant is the holding company
The beneficiaries:	The qualifying employees

5. Description of the proposed transaction

The trustees made awards to qualifying employees from time to time. Beneficiaries were issued units, evidencing their respective interests in the trust.

The trustees procured that all scheme shares remained registered in the names of the trustees for the time being, but for the beneficial interest of the relevant beneficiaries, until their delivery.

Each unit –

- was non-transferrable, but subject to forfeiture in accordance with the trust deed;
- represented a vested right to one ordinary share in the applicant;
- afforded the beneficiary the voting and distribution rights set out in the trust deed;
- afforded the beneficiary the right to the delivery of the shares as contemplated in the trust deed.

No beneficiary was entitled to–

- pledge or encumber or dispose of his or her units or the underlying shares; or
- enter into any agreement in respect of any votes attached to the units or the underlying shares.

On the final date, (as defined in the trust deed), the trustees must deliver the shares underlying each unit to the relevant beneficiary. However, a beneficiary could deliver a notice to the trustees fifteen days before the final date –

- requesting the trustees to sell the shares for and on behalf of the beneficiary; and
- indicating that the beneficiary would take delivery of the shares, with transaction costs and taxes in that event payable by the beneficiary to the trust.

The trust deed further provides that the beneficiaries may not for a period of seven business days after the final date dispose of or encumber any shares received by them.

The trust deed also provides for special arrangements applicable to good and bad leavers. Bad leavers would forfeit their units and the shares underlying those units. In the case of retrenchments or death, the good leavers or the estate of any deceased beneficiary would still benefit from the scheme until their participation termination date.

It bears emphasis that the beneficiaries acquired beneficial ownership of the scheme shares when they acquired their units.

6. Conditions and assumptions

This binding class ruling is not subject to any additional conditions and assumptions.

7. Ruling

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

a) The “restricted equity instruments” will vest in both the beneficiaries who elect to receive shares and those who receive cash, in terms of section 8C(3)(*b*)(i) on the final date as defined in the trust deed.

b) The gain to be included in the income of each beneficiary under section 8C(2)(*a*)(ii) will be the market value, that is the volume weighted average price of the shares on the JSE, on the final date as defined in the trust deed.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of three years from 10 July 2017.

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