

BINDING PRIVATE RULING: BPR 131

DATE: 11 January 2013

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 8C AND PARAGRAPHS 2 AND 11A OF THE FOURTH SCHEDULE TO THE ACT
SUBJECT : VESTING DATE OF A RESTRICTED EQUITY INSTRUMENT

1. Summary

This ruling deals with the vesting date of a restricted equity instrument acquired by employees in respect of their employment.

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 and paragraphs are to sections of the Act and paragraphs of the Fourth Schedule to the Act applicable as at 18 September 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 8C; and
- paragraphs 2 and 11(A) of the Fourth Schedule.

3. Parties to the proposed transaction

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

The Holding Corporation: A company incorporated in Jersey which is the holding company for a group of companies including the Applicant (the Group)

Qualifying employees: Eligible directors and employees within the Group

4. Description of the proposed transaction

The Holding Corporation (the Corporation) is a company incorporated in Jersey, and listed on the Alternative Investment Market of the London Stock Exchange.

The Corporation has a Share Option Scheme (the Scheme) in place which has been adopted by the Board of Directors.

In terms of the rules of the Scheme, options are granted to eligible directors and employees within the Group.

An option entitles a Qualifying employee to acquire shares in the Corporation upon exercise of the option.

An option is personal to a Qualifying employee and cannot be transferred, changed or otherwise disposed of by him/her and shall lapse immediately if the Qualifying employee purports to transfer, change or otherwise dispose of the option.

Subject to the rules of the Scheme, an option may not be exercised earlier than the latest of –

- three years after the date granted; or
- the date on which a committee determines that the required performance conditions have been satisfied.

An option is exercised by a Qualifying employee upon delivery of a duly completed notice of exercise to the company, accompanied by the full payment of the exercise price for the shares for which the option is being exercised.

5. Conditions and assumptions

This ruling is subject to the additional condition that it only applies to instances where a Qualifying employee exercises his/her option and does not deal with any eventuality which may occur thereafter during the existence of the Scheme.

6. Ruling

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

- The options granted under the Scheme rules will each constitute a “restricted equity instrument”, as defined in section 8C(7).
- The options will terminate as a result of their exercise and will not vest.
- Any shares acquired in the Corporation by a Qualifying employee will be unrestricted equity instruments. The aforementioned shares will vest at the time of acquisition, as contemplated in section 8C(3)(a), when all the terms and conditions of the scheme have been fulfilled.
- A gain will only be included in the income of a Qualifying employee when an event contemplated in the aforementioned paragraph occurs. No obligation to withhold employees’ tax will exist prior to such an event.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 3 years from 18 September 2012.

Issued by:

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