

BINDING PRIVATE RULING: BPR 170

DATE: 30 May 2014

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTION 8C(7)
SUBJECT : DEFINITION OF UNRESTRICTED EQUITY INSTRUMENT

1. Summary

This ruling deals with the question whether the condition imposed on an employee to sell back shares over a period of time to his employer (at market value on termination of employment) will result in the shares being regarded as “restricted equity instrument[s]” as contemplated under section 8C(7).

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 are to sections of the Act applicable as at 17 January 2014 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(7).

3. Parties to the proposed transaction

The Applicant: An individual who is not a resident of South Africa

4. Description of the proposed transaction

The Applicant intends to sell shares which he acquired in a company (the Employer) in terms of the Employer Group Employee Share Scheme (the Scheme).

The Applicant is a resident of Country X and rendered services in Country X at all relevant times in relation to the proposed transaction.

The Applicant was previously employed by the Employer which is also a resident of Country X. During the course of the Applicant's employment, he acquired shares in the Employer in terms of the Scheme.

The essential features of the Scheme, in relation to the shares held by the Applicant, are as follows –

- the Applicant is the beneficial owner of the shares;

- the Applicant may sell the shares at any time to any party subject to the management board of the Employer approving the purchaser of the shares; and
- the Applicant is required in terms of the rules of the Scheme to sell the shares when leaving the Group.

Subsequent to the acquisition of the shares, the Applicant was required to enter into a Put and Call Option Agreement (the Agreement). The Agreement does not require the Applicant to sell the shares to the Employer, but to a company in the same group as the Employer (the Company) should it call on the Applicant to do so. The Agreement gives the Applicant the right to sell the shares to the Company at the time that the Applicant wishes to sell the shares.

The Agreement also provides that, as regards all employees, shares will be sold at market value, to be determined by the employer on termination of employment, but not all the shares can be sold immediately. The sales will be spread over a period of four years after the issuance of the notice fixing the price per share.

The Applicant's employment with the Employer had previously been terminated and the Applicant sold some of his shares to the Company in terms of the Agreement. The remaining shares will, in terms of the Agreement, be sold to the Company over a period of four years at a pre-determined price, that is, the market value which was determined and fixed at the time of termination of the Applicant's employment.

The Applicant is not required to render any further services to the Employer.

The Applicant would like to relocate to South Africa with his family and he will most likely become a resident of South Africa before the remaining shares are sold to the Company.

5. Conditions and assumptions

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

6. Ruling

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

- The remaining shares held by the Applicant will constitute "unrestricted equity instrument[s]" as defined in section 8C(7).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of 5 years from 17 January 2014.

Issued by: