BINDING PRIVATE RULING: BPR 277

DATE: 6 September 2017

ACT	**:**	**INCOME TAX ACT 58 OF 1962 (the Act)**
SECTION	**:**	**SECTION 8C, PARAGRAPH 11A OF THE FOURTH SCHEDULE AND PARAGRAPHS 11(2)(*j*), 13(1)(*a*)(iiB), 38, and 80 OF THE EIGHTH SCHEDULE TO THE ACT**
SUBJECT	**:**	**CONSEQUENCES FOR AN EMPLOYEE SHARE TRUST ON THE UNWINDING OF AN EMPLOYEE SHARE INCENTIVE SCHEME**

1. Summary

This ruling determines the tax consequences for an employee share trust resulting from the vesting of "restricted equity instruments" held by its beneficiaries, and whether the trust is liable to withhold PAYE in respect of the vesting of the section 8C gain in the beneficiaries.

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 28 of 2011.

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 11 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;
- paragraph 11A of the Fourth Schedule; and
- paragraph 11(2)(*j*);
- paragraph 13(1)(*a*)(iiB);
- paragraph 38; and
- paragraph 80 of the Eighth Schedule to the Act.

3. 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

4. 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.

The rules of the scheme state that 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.

5. Conditions and assumptions

This binding private ruling is subject to the additional condition and assumption that the ruling issued does not apply to any scheme shares that remained in the Trust because they were unallocated or for any other reason.

6. Ruling

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

a) The trust is the employer, and will be liable to withhold PAYE.

b) The tax liability arising out of the vesting of either the scheme shares or cash and thus the obligation to pay over the above-mentioned PAYE arises, both in respect of beneficiaries who receive shares and those who receive cash, on the final date as defined in the trust deed.

c) In terms of paragraphs 11, 13, 38 and 80 of the Eighth Schedule, despite the delivery of shares to a beneficiary or the sale of shares for his or her benefit, no disposal, and consequently no capital gain, will result in the trust.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of three years from 11 July 2017.

Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE