

BINDING PRIVATE RULING: BPR 324

DATE: 20 August 2019

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 10(1)(cN), 25B, 30, 64F AND PARAGRAPHS 20(1)(a) AND 63A OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : DISPOSAL AND ACQUISITION OF SHARES BY A PUBLIC BENEFIT ORGANISATION

Preamble

This binding private ruling is published by consent of the applicant to which it has been issued. It is binding as between SARS and the applicant only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the tax implications arising from the acquisition by a public benefit organisation (PBO) of listed Black Economic Empowerment (BEE) shares funded by –

- the proceeds from the disposal of listed ordinary shares held by the PBO;
- dividends received by the PBO in respect of the listed ordinary shares held; and
- cash received by the PBO as a beneficiary of certain trusts.

2. Relevant tax laws

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 25 April 2019. 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 10(1)(cN);
- section 25B;
- section 30;
- section 64F;
- paragraph 20(1)(a); and
- paragraph 63A.

3. Parties to the proposed transaction

- The applicant: A resident trust approved as a PBO in accordance with section 30(3)
- Company A: A resident company listed on the JSE in which the applicant holds ordinary shares
- The trusts: Four resident trusts which will be dissolved. The applicant is a beneficiary of each

4. Description of the proposed transaction

The applicant holds ordinary shares in company A in respect of which it receives dividends which it uses to make donations to other PBOs as envisioned in paragraph 10(a) of Part I of the Ninth Schedule to the Act.

The applicant intends to replace these shares held in company A with BEE shares in company A. The BEE shares are considered a better investment as they rank *pari passu* with the ordinary shares with respect to dividends, but trade at a discounted price to them and yield higher dividends in comparison to them. The disposals will extend over several years due to market conditions.

The trusts will be dissolved and will make cash distributions to the applicant out of –

- Dividends received, retained and capitalised by the trusts during previous years of assessment; and
- Interest accrued on cash balances held by the trusts.

The applicant will use the cash distributions received from the trusts as well as the proceeds from the disposal of listed ordinary shares held by the applicant in company A and dividends received to purchase BEE shares in company A.

5. Conditions and assumptions

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

6. Ruling

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

- a) The proposed disposals of the ordinary shares from time to time when BEE shares become available in the market and the use of the proceeds from those disposals to purchase BEE shares will not, in and of themselves, constitute a 'business activity' or 'trading activity' conducted by the applicant. Paragraph 63A will apply to the disposals so that any capital gain derived from them must be disregarded.
- b) The disposals will not, in and of themselves, adversely affect the applicant's status as an approved PBO for purposes of section 30(3).
- c) The dividends received by the applicant in respect of its ordinary shares in company A and its BEE shares in company A will be exempt from normal

tax under section 10(1)(cN) and exempt from dividends tax under section 64F(1)(c).

- d) The interest distributed by the trusts to the applicant in the same year of assessment will retain its character as interest by virtue of section 25B(2), and will therefore also be exempt from normal tax under section 10(1)(cN).
- e) Any capital gain derived from the distributions of trust capital by the trusts to the applicant in accordance with their dissolution processes must be disregarded under paragraph 63A.
- f) The base cost of each of the BEE shares to be acquired by the applicant will be equal to the subscription price paid by the applicant for such share under paragraph 20(1)(a).
- g) Nothing in this ruling precludes the Commissioner from exercising the powers under section 30(5), or any amendment or substitution of that provision.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 25 April 2019.

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