

BINDING CLASS RULING: BCR 036

DATE: 29 November 2012

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 10(1)(iB), 10(1)(k)(i)(ee) AND 25BA
SUBJECT : RESERVES OF A COLLECTIVE INVESTMENT SCHEME IN SECURITIES AND THE DISTRIBUTION THEREOF TO UNITHOLDERS

1. Summary

This ruling deals with the tax treatment that will be applicable in respect of reserves held by a collective investment scheme in securities that will be distributed to unitholders in the 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 No. 28 of 2011.

In this ruling references to sections are to sections of the Act applicable as at 16 October 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 10(1)(iB);
- section 10(1)(k)(i)(ee); and
- section 25BA.

3. Class

The class members to whom this ruling will apply will be the unitholders as described in point 4 below.

4. Parties to the proposed transaction

The Applicant: A collective investment scheme in securities as contemplated in the Collective Investment Schemes Control Act No. 45 of 2002

Unitholders: Unitholders of a participatory interest in the Applicant

5. Description of the proposed transaction

In terms of an arrangement entered into prior to January 2005, dividends were received by the Applicant up to 31 December 2010 and were included in the “gross income” of the Applicant as these dividends were not distributed within the 12 month period as required by section 25BA. These dividends were exempt in the hands of the Applicant under section 10(1)(k) and they remained on the balance sheet of the Applicant as undistributed reserves.

In order to unwind the Applicant, these reserves must be distributed. The reserves can, however, only be unlocked if the counter party to the arrangement receives the revenue stream originally agreed upon.

The Applicant, therefore, wishes to sell participatory interests in itself to members of the public. The proceeds of the sales to members of the public will be used to increase the Applicant's interest in an underlying collective investment scheme in securities. The distributions received by the Applicant from the underlying collective investment scheme in securities will be paid into a bank account. The payments received will be used to unlock the Applicant's reserves, viz dividends which accrued but which could not be accessed because of inadequate payments received from the underlying collective investment scheme in securities.

6. Conditions and assumptions

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

7. Ruling

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

- The Applicant's reserves will not be subject to the provisions of section 10(1)(k)(i)(ee) as the dividends had accrued to the Applicant prior to the date on which these provisions became effective.
- As these amounts were not distributed within the applicable 12 month period (that is 1 January 2011 to 31 December 2011) they will be exempt from normal tax in the Applicant's hands as the non-distribution took place prior to the effective date of the amendment to the provisions of section 25BA, which came into effect 1 January 2012.
- The distribution of the reserves by the Applicant to Unitholders will be exempt from normal tax in the hands of the Unitholders under the provisions of section 10(1)(fB).
- The ruling applies only to the distribution of the undistributed reserves of the Applicant as at 31 December 2011.

8. Period for which this ruling is valid

This binding class ruling is valid for a period of 5 years from 16 October 2012.

Issued by:

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