

BINDING PRIVATE RULING: BPR 350

DATE: 26 August 2020

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 7C AND PARAGRAPH 80(2) OF THE EIGHTH SCHEDULE
SUBJECT : VESTING OF A CAPITAL GAIN IN A TRUST BENEFICIARY AND DEFERRAL OF ITS PAYMENT

Preamble

This binding private ruling is published with the consent of the applicant to which it has been issued. It is binding 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 consequences of the vesting of a capital gain in a beneficiary, where the payment of the capital gain is deferred at the discretion of the trustees and the capital gain is invested on behalf of the beneficiary.

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 26 June 2020. 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 7C; and
- paragraph 80(2).

3. Parties to the proposed transaction

The applicant: A resident trust
The beneficiary: A resident natural person
The trustees: The trustees of the applicant

4. Description of the proposed transaction

The trust deed was amended specifically to provide unilateral powers to the trustees, whereby the trustees have the right to credit a vested capital gain to the account of the beneficiary, to invest it on behalf of the beneficiary or to otherwise deal with it without actual payment of an amount or delivery of an asset to the beneficiary.

The trustees propose to dispose of an investment held by the trust. This disposal will result in a capital gain which will be awarded to the beneficiary. The trustees will unilaterally invoke their powers to defer the enjoyment of this amount to a date to be determined in the sole discretion of the trustees.

The beneficiary will play no role in the decision to be made by the trustees to defer the enjoyment of the vested amount. The beneficiary will not make any loan or credit to the trust and will not conclude any agreement with the trustees in this regard.

The trustees will invest the vested amount on behalf of the beneficiary for his benefit. The income arising from such investment will accrue to the beneficiary and not to the trust.

The trustees will keep accurate records of the vested amount, to which enjoyment has been withheld, so as to track and identify the amount so vested and the income that it yields. Any assets acquired on behalf of the beneficiary with the vested amount will be accounted for and recorded by the trustees in the financial records of the trust.

The beneficiary has the right to alienate the award, and to offer it as security.

The last date for the payment of the award, if it is not paid out earlier, is the date of death of the beneficiary.

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) Paragraph 80(2) will apply and the capital gain must be disregarded for the purpose of calculating the aggregate capital gain or loss of the trust and must be taken into account for the purpose of calculating the aggregate capital gain or loss of the beneficiary.
- b) Section 7C will not apply to the proposed transaction.
- c) Any subsequent income earned on the vested amount, or such income as will be apportioned to the vested amount, to which enjoyment has been withheld, will accrue to the beneficiary and must be included in the gross income of the beneficiary.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from the date of the ruling.