

BINDING PRIVATE RULING: BPR 362

DATE: 26 May 2021

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 55(1) – DEFINITION OF “DONATION” AND PARAGRAPHS 1 – DEFINITION OF “DISPOSAL”, 13(1)(a)(iiB) and 38 OF THE EIGHTH SCHEDULE TO THE ACT
SUBJECT : TRANSFER OF ASSETS BETWEEN SHARE INCENTIVE TRUSTS

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 and any co-applicant(s) only and published for general information. It does not constitute a practice generally prevailing.

1. Summary

This ruling determines the income tax consequences of the transfer of shares and cash from existing share incentive trusts to new share incentive 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 as at 20 April 2021. 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 definition of “gross income” in section 1(1);
- the definition of “donation” in section 55(1);
- the definition of “disposal” in paragraph 1;
- paragraph 13(1)(a)(iiB); and
- paragraph 38.

3. Parties to the proposed transaction

The applicant: A resident discretionary trust

Co-applicants 1 and 2: Resident discretionary trusts

(The applicant, co-applicant 1 and co-applicant 2 will be collectively referred to as the old trusts)

Co-applicants 3 and 4: Resident discretionary trusts
(Co-applicant 3 and co-applicant 4 will be collectively referred to as the new trusts)

4. Description of the proposed transaction

Before June 2018 the old trusts administered the employee share incentive scheme for participating employer companies in the ABC Limited group. The new trusts administered the new share incentive scheme and made all employee share awards from September 2018 onwards.

Both the old trusts and the new trusts hold ABC Limited shares as –

- allocated shares – those shares allocated to employees from 1 March 2016 onwards, but held by the trusts on their behalf; and
- unallocated shares – those shares held in the names of the trusts, not yet allotted to employees.

The old trusts also hold cash from dividends received in respect of unallocated shares and interest earned.

ABC Limited has embarked on a project to simplify the group as a whole in terms of administration and reporting. The old trusts will transfer all the shares as well as any remaining cash to the new trusts which will assume the obligations of the old trusts.

The new trusts will –

- receive the unallocated shares in pursuance of the objects of the trusts to be allocated to future eligible employees; and
- undertake the obligations stipulated in their constitutive deeds to vest the allocated shares in employees when required.

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:

In respect of the allocated shares and unallocated shares –

- a) The transfer of the shares by the old trusts to the new trusts will result in disposals for purposes of the Eighth Schedule for the old trusts.
- b) Paragraph 38 will apply to the disposals by the old trusts to the new trusts and the –
 - proceeds for the old trusts; and
 - base costs for the new trusts

will be the market values of the shares on their respective dates of disposal.

- c) The transfers of the shares by the new trusts to participating employees, upon the vesting of those shares for purposes of section 8C, will result in disposals under paragraph 13(1)(a)(iiB) by the new trusts.

In respect of the transfer of the cash reserves by the old trusts to the new trusts –

- d) The amounts received by the new trusts will be of a capital nature and will therefore not constitute “gross income” as defined in section 1(1).

In respect of the transfer of the cash reserves and shares by the old trusts to the new trusts –

- e) the disposals will not constitute donations as defined in section 55(1).

7. Period for which this ruling is valid

This binding private ruling is valid in respect of the years of assessment ending 28 February 2021, 28 February 2022 and 28 February 2023.