

BINDING PRIVATE RULING: BPR 116

DATE: 10 April 2012

Some guidance contained in this ruling is affected by subsequent law changes. Refer to sections 10(1)(k)(ii) and 10B(2).

ACT : INCOME TAX ACT, NO. 58 OF 1962 (the Act)
SECTION : SECTIONS 10(1)(k)(ii)(dd), 25B and 56(1)(g)(ii)
SUBJECT : DISTRIBUTION TO BE RECEIVED BY A RESIDENT BENEFICIARY FROM A TRUST THAT IS NOT A RESIDENT AND THE SUBSEQUENT DONATION THEREOF BY THE BENEFICIARY TO ANOTHER TRUST THAT IS ALSO NOT A RESIDENT

1. Summary

This ruling deals with some income tax consequences for a resident beneficiary in respect of an amount to be received as a distribution from a discretionary trust that is not a resident and the subsequent donation of that amount by the beneficiary to another trust that is also not a resident.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling references to sections are to sections of the Act applicable as at 18 January 2012 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 10(1)(k)(ii)(dd);
- section 25B; and
- section 56(1)(g)(ii).

3. Parties to the proposed transaction

The Applicant: A natural person who is a resident of South Africa

Trust A: A testamentary and discretionary trust that was formed in a foreign country which is not a resident of South Africa

Trust B: A trust to be formed by the Applicant in the same foreign country as Trust A, which will not be a resident of South Africa

4. Description of the proposed transactions

The Applicant is a beneficiary of Trust A, by will and testament of its founder. The trust holds all the shares in a company that is not a resident of South Africa. During the 2010 calendar year the trust received a dividend from this company which the trust did not immediately distribute to its beneficiaries.

It is proposed that Trust A will in due course distribute an amount, equal to the amount of that dividend, to the Applicant. The Applicant intends to, immediately on receipt thereof, donate that amount to Trust B.

5. Conditions and assumptions

This ruling is made subject to the conditions and assumptions that –

- the amount of the distribution to be received by the Applicant from Trust A must comply with the requirements under section 10(1)(k)(ii)(da); and
- the subsequent donation to be made by the Applicant to Trust B must consist of a right in property situated outside of the Republic.

6. Ruling

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

- The amount of the distribution to be received by the Applicant from Trust A will not be included in the Applicant's income under section 25B(2A).
- The subsequent donation to be made, by the Applicant to Trust B, will be exempt from donations tax under section 56(1)(g)(ii).

7. Period for which this ruling is valid

This binding private ruling is valid for a period of two years from January 2012.

Issued by:

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